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WOMAN AND THE LAW

GEORGE JAMES BAYLES

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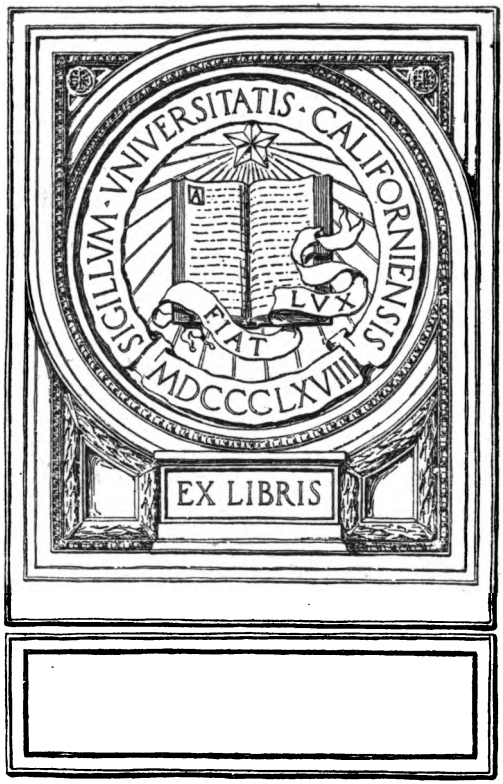

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WOMAN AND THE LAW

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WOMAN AND THE LAW

BY

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PREFACE

THIS work is designed to serve the purposes of a general view of the legal condition of the women of the United States at the present time, and is more especially for the reading of women. It is a general statement and not an exhaustive analysis; it is not designed for the practising lawyer, man or woman, for though it deals with legal principles, it does not apply them to concrete cases; and least of all is it an attempt to make every woman her own lawyer.

American women, whether studying alone or in clubs, are coming more and more to take an appreciative interest in the sociological development of the nation, and naturally a subject to engage their attention is the condition of their fellow-women viewed from all standpoints. Perhaps the most difficult branch of the general subject to be handled by women in a comprehensive way is the positive law, both because the material is not easily accessible and because some experience is needed to make use of the material when found. A law library is both a mine of raw material and a laboratory

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for the work of analysis and comparison, but unless one knows what to expect and how to look for it, such a library seems nothing more than an accumulation of tiresome volumes. Within these dreary-looking books, however, is written a large portion of the life history of the nation. Read into the laws the efforts and hopes of generations of earnest men and women, and the study becomes one of living organism—human society.

The subject-matter that is here dealt with is divided into three parts: domestic relations, which are of the greatest importance to every woman; property relations; and what have been designated as public relations. The domestic relations show, first, the elements of social integration—that is, the institution of marriage and the family,—and then the elements of disintegration, the separation of husband and wife and divorce. The property relations are the most difficult to describe in general statements, but they are well worth study, for they reveal the development in the legal individuality of woman. The public relations, on the other hand, are much more simple, and have the value of showing the political status of women in the modern state.

While every effort at accuracy has been made, errors there probably are, more likely

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in the statute law resulting from amendments by implication. If, however, in the course of careful study such errors are discovered, one of the main objects of this small work will have been accomplished, for there will have been more study by American women of their legal condition.

G. J. B.

COLUMBIA UNIVERSITY,
NEW YORK, May, 1901.

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THE STUDY OF LAW FOR WOMEN

THE non-professional study of the law is not altogether a new thing. Sir William Blackstone, whose Commentaries are so world-famed that the name of the author easily passes as a synonym for the law itself, lectured not to professional aspirants at the Inns of Court in London, but to the gentlemen of England who were undergraduates at Oxford, and who had little thought, perhaps, of a career at the bar. Similarly, Chancellor Kent read his immortal Lectures not at the School of Law, but under the Faculty of Arts at Columbia College in New York City.

The place of law in a schedule of studies framed with a view to a polite and general culture has been nobly exhibited by Blackstone in his introductory lecture. But what was true a century and a half ago of England under the rule of its landed gentry, is doubly true of America, with its more popular institutions of government and its traditions of equality before the law.

The law is stubbornly viewed by the lay public as a body of rules regulating the pro-

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cedure and sittings of courts, the language of written instruments, and the order of judicial inquiry and determination, thus presenting a most uninviting field for exploration. The substantive law, so called, the law of primary rights, as distinguished from practice and remedial justice, is too often hidden deep down under a weight of forms and technicalities, and sustains a terrible burden of pedantic erudition and recondite and mystic learning, bewildering and disheartening to the student. Women especially have no interest in a mere war of words. But when once the law properly appears in its scientific and philosophical relations, as akin to ethics, as affecting conduct, as inculcating a lofty morality and exhibiting a noble standard of right, as teaching us to look into the face and hear the voice of God, then the dignity and the nobility, or we may even say the divine nature, of jurisprudence evokes the reverent contemplation of all intelligent men and women. We must therefore contend that some considerable knowledge of the law should be sought by every human being who aspires to real education.

A common fallacy regarding the law is that it issues as a perfect product from some legislative hall, and is imposed upon a subject people by external authority. The truth is, however, that it has its origin in the neces-

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sities of mankind, and its first authoritative expression in some judicial decision; it is never finished and ideal, but always seeking a higher perfection; and finally, under the free political institutions of our western world, it is never imposed by the arms of a conqueror, but always enacted by the voluntary action of the people.

The range and variety of legal rules are limited only by the activities and relations of human society. The law has its message of authority, its sharp rebuke, its word of counsel, its threatened vengeance, as well as its bulwarks of defense, its munificent endowments, and its inalienable rights; and these must be read by the intelligent citizen between the lines of history, romance, and financial quotations, and should be seen in all the encounters of violence and crime, the intrigues of passion, and the battles of markets and exchanges. The bride at the altar, the widow in her quarantine, and the babe unborn are all within the merciful protection of the law. The desperate may not take his own life, the gambler may not stake his liberty, and the prodigal may not waste his inheritance.

The leadership of America in matters alike of money, mind, and morals may be ascribed in large part to the influence of her women. In the Eastern countries at the present time,

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and in primitive antiquity everywhere, we find woman in the position of a slave and household drudge. Even to-day the German Emperor is said to limit woman's sphere to the kitchen, the nursery, and the church; and the divorce law of England at the present time has one rule of right conduct for a man and quite another rule for his wife.

But in the United States the law has reached that lofty elevation of ethical sentiment which enables it to announce that justice knows no distinction of sex. In this country, apart from voting and holding office, woman labors under no legal disabilities. A wife's control of her real property is greater than her husband's control of his; for the statutes of New York and many other States forbid a man to dispose of his lands and tenements, by deed or will, in disregard of his wife's right of dower, whereas the fullest liberty of transfer is enjoyed by the married woman. Moreover, husbands and fathers seem to covet, if not for their wives, most certainly for their daughters, the fullest measure of immunity from masculine interference and domination. Tendencies apparently irresistible are making for the extension of these rights throughout all the centers of civilization. The just and safe endowment of widows and orphans, and the protection of inherited estates from the rapacious

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raids of greedy creditors and unscrupulous attorneys, necessitate the financial independence of woman, whether maid or matron. The education of woman must be commensurate with the splendor of her new heritage of rights and responsibilities, and should be such as to qualify her for the duties of executor, guardian, and trustee, as well as for the responsibilities of the ownership of lands or the stocks and bonds of incorporated companies.

Woman is thus in need of instruction in the law, not to enable her to be her own lawyer, but to qualify her to appreciate and act upon legal counsel understandingly. If she is to continue to figure as a capitalist, taxpayer, litigant, and, perhaps, voter, on a more and more liberal scale, she ought certainly to make herself master of the rudiments of legal science.

I. F. R.

NEW YORK UNIVERSITY LAW SCHOOL,
June 10, 1901.

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Part I

DOMESTIC RELATIONS

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WOMAN AND THE LAW

THE CONTRACT TO MARRY

THIS contract is in its nature a mutual agreement between a man and a woman to marry each other or to become husband and wife at a future time, and must satisfy all the legal requirements the same as other contracts. When a man and a woman have promised to marry each other and one of them refuses to carry out the agreement, the other may bring a suit for damages, as in the case of other contracts.

To sustain such a suit, however, there must have been a definite offer of marriage, or a promise to marry, by one party that has been made known to the other. A mere intention to marry communicated to third persons not in the presence of the other party is no offer or promise at all. Such a valid offer may, however, be made through a friend or an agent. No express form of words is required, as it need only appear that both the

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man and the woman understood it to be an offer of marriage.

Another essential feature of this contract is that there is a definite acceptance of the offer or promise. The acceptance, like the offer, may be made through a third person, and need not be in express words, but may be inferred from the conduct of the one who accepts the offer or promise. It must appear that the acceptance was made known to the other party, and that it was made within a reasonable time after the offer was made. The promise of a man to marry a woman "if he married any one" has been held void both because it is too indefinite and because it operates virtually as a restraint upon marriage, and is for that reason against the public policy.

If the parties to a contract to marry do not themselves make the contract definite as to time and place, the law in a suit for breach of promise will presume that a promise to marry is a promise to marry within a reasonable time and at the residence of the woman. The consideration in a contract of this kind is the mutual promise. There may, however, be some other consideration, in addition, which will neither add to nor detract from the validity of the contract, unless such a consideration is immoral in its nature.

This contract must be made between com-

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petent parties, as will be seen in the consideration of marriage, and in order to bind himself by a promise of marriage the person must be capable both of making a binding contract and of entering into a valid and legal marriage. Thus, a minor who is not capable of making ordinary contracts, though he is old enough to marry, is not bound by a promise of marriage. The fact that a party has already promised to marry some one—that is, is engaged to be married—does not affect his capacity to promise to marry some one else.

The use of any form of force, or any concealment with intent to deceive, or any false representations may invalidate contracts to marry just as they may invalidate other contracts. So a promise to marry made at the point of a pistol or to get away from actual confinement cannot be made a ground for damages. While a woman is not bound to disclose anything concerning herself, except her previous unchastity or her physical unfitness for marriage, yet any false representations made by her, or on her behalf with her knowledge, for the purpose of deceiving the man, will constitute a fraud, and the man's promise is not binding, whether such false representations relate to the woman's social position and fortune or to her character.

It is not possible to bring a suit for the

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specific performance of a contract to marry, but an action for damages will lie for a breach of such a contract. Such an action is allowed by the common law independently of statute, and it may be brought either by a man or a woman. In such actions, based upon a breach of promise to marry, the damages have not been limited by the courts to the general rules governing actions upon simple contracts for the payment of money, but rest with the discretion of the jury considering the circumstances of each particular case.

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MARRIAGE

PERHAPS the best general definition of marriage is that it is the legal status or condition of husbands and wives. It denotes the legal conditions under which a man and a woman may lawfully cohabit and have legitimate children. Marriage is constantly referred to in American legislation as a civil contract; but, strictly speaking, marriage is not a contract, nor is the relation of husband and wife a contractual relation, although there are many contracts that are connected with the marriage relation. Where this phrase "civil contract" is used the design is to place the emphasis upon the word civil, and not upon the word contract, in order to denote the fact that under modern law marriage is not controlled by the canonical provisions of ecclesiastical organizations. In this sense marriage is declared by the laws of many of the States to be a civil contract. All of the American States have legislated with reference to the institution of marriage, and some of them have enacted elaborate provisions of procedure. According to the general policy of the State, marriages are to be

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encouraged, and all that is done in restraint of marriage is regarded as against public policy. It is so expressly declared in the laws of two of the States—Pennsylvania and Georgia—that all marriages are to be encouraged, while the common policy of all the States is to look at every effort to restrain or to discourage marriage by contract, condition, limitation, or otherwise as invalid and void. It was once declared in the British House of Lords that to try to prevent marriage was the blackest of all political sins. The laws of all the States, therefore, sanction all those marriages where the man and the woman at the time of the marriage were willing to enter into this relation, were able to contract, and did so contract according to the forms prescribed by law.

There are in fact and in law four elements that are everywhere regarded as essential to a valid marriage; these elements are, first, competent parties. Each of the parties to a marriage must have the capacity to marry the other. Thus, a woman may not be able to marry a certain man either because she is too nearly related to him or because she is not of the same race. The second element may be described as the contract of marriage. The parties must mutually agree to be thenceforth husband and wife. No one can be married without his or her consent,

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no matter how competent the parties may be, and no matter what formalities they go through. The third essential element is a solemnization of marriage. The parties must go through a certain formality, sometimes religious and sometimes civil. The State, for the protection of all the people and the preservation of social institutions, as a rule prescribes formalities, and does not allow people to enter marriage as they would an ordinary partnership. The fourth element of the status of marriage is a consummation. The parties are expected to become husband and wife in fact, and assume the marriage rights, duties, and obligations. Now, the absence of one or more of these elements may not render a marriage invalid, and as a general rule the absence of a ceremony or of any consummation of a marriage will not prevent the parties from being regarded as man and wife, whatever other results may be entailed upon them. For a marriage which is valid may be invalid in certain respects, or it may be a prohibited or voidable marriage. A legal marriage is one with respect to which all the provisions of the law have been complied with, but there are many provisions of the statutes relating to marriages which may be disregarded without preventing the parties from becoming by the marriage completely hus-

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band and wife. For example, a license is usually required by law, but failure to secure a license will not, as a rule, prevent the parties from becoming husband and wife if they are otherwise properly married. An attempt at marriage that is invalid for all intents and purposes is called a void marriage, and needs no proceeding of a court to declare it such. So if a woman, being already married, marries another man, her marriage is invalid without any judgment or decree, simply because the State will not allow her to be the wife of two men at the same time. Unfortunately, it is possible, through the diversity of legislation in this matter, for a marriage to be valid in one State and not in another. A voidable marriage is one which is valid to all intents and purposes unless and until it is duly avoided, or which is valid for all intents and purposes unless and until duly confirmed, and so becomes unavoidable.

There have developed certain rules of construction which are useful when a study is made of the statutes of the various States relating to this subject. In the first place, unless by the use of express words a statute goes to the validity of a marriage—that is, unless there are express words of nullity—it will be held to affect only the legality or the regularity of the marriage. Thus, in the State of Maryland a statute providing sim-

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ply that a white person and a negro shall not intermarry has been held not to render such a marriage invalid. So, again, statutes that prescribe certain formalities in connection with marriage, but not providing that if such formalities are not followed the marriage shall be void, have been held to be directory only. Another rule of construction is that a statute referring to the formation of marriage will be made to harmonize as far as possible with the preëxisting law. Thus, a statute declaring a marriage void, but not expressing any intention of changing the preëxisting law, will not be held to render a marriage formerly voidable absolutely void.

A woman may be generally incapable of marrying or incapable of forming a particular marriage because of want of age, or lack of mental capacity to understand the nature of the act, or want of physical capacity to consummate the marriage, or relationship by blood (consanguinity), or by marriage (affinity), with the man, or by being of a different race from the man, or having been married before and that marriage not being at an end. As to want of age. At common law the marriage of a party under seven years of age was void. The marriage of a female between seven and twelve years of age was voidable, while the marriage of a male over fourteen years and a female over twelve was valid.

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The common-law rule requiring twelve years for the woman has been retained by statute in the States of New Hampshire, Virginia, West Virginia, Kentucky, and Louisiana. Fourteen years for the woman is required by the laws of the States of Alabama, Arkansas, Georgia, Illinois, Iowa, New York, North Carolina, and Texas. Fifteen years for the woman is required in California, Minnesota, Oregon, and Wisconsin. Sixteen years is required in the States of Idaho, Indiana, Michigan, Nebraska, Nevada, Ohio, and Wyoming. Eighteen years is required in the States of Montana and Washington.

The mental capacity that is necessary to enable a woman to marry or to confirm her marriage is such as renders her capable of understanding the nature of the act and its consequences, of entering into ordinary contracts, of managing herself, her property and affairs. The want of capacity must exist at the time of the marriage, so periods of insanity before the marriage, or the development of insanity afterward, will not be conclusive of mental incapacity. The marriage of an insane woman during a lucid interval, in the absence of statute, has been held valid, but the burden of proof lies on the party alleging the lucid interval. Physical incapacity, or impotence, is not an impediment to marriage in the absence of a statute or

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ecclesiastical jurisdiction. Under the ecclesiastical law impotence rendered a marriage voidable, and in nearly all of the States at the present time there is some statutory provision rendering impotence an impediment to marriage or a cause for divorce. The marriage of a man and a woman related by blood or by marriage within certain specified degrees may be under the provisions of the criminal law regarded as incest, or under the ecclesiastical law as voidable, or by express statutes void. As affecting the capacity of a woman to marry, relationship of consanguinity and affinity is dependent on statute in all the American States at the present time. This form of incapacity is based primarily on the laws of Moses, contained in the eighteenth chapter of the book Leviticus, but more directly upon a statute passed in the thirty-second year of the reign of King Henry VIII. This statute confined the incapacity to all related in the ascending or descending line, and to collaterals including the third degree, civil reckoning—that is, all nearer than first cousins—and by construction the statute applied whether the relationship was by blood or marriage, whether by whole blood or half blood, whether legitimate or not.

Nowhere in this country is a marriage with a deceased wife's sister invalid, except

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in the State of Virginia. The general rule is that no woman may marry her lineal ancestor or descendant, or her brother of the half or whole blood, nor can there be a marriage between a woman and her uncle or a woman and her nephew by blood. A woman may not marry her mother's husband nor her husband's son, nor her grandmother's husband. By the law of the State of Louisiana a woman cannot marry a second time until ten months after the dissolution of the preceding marriage.

As to difference of race. In some of the States the marriage of persons of different race, as white persons and negroes, or white persons and Indians, is forbidden and made a crime, which is called miscegenation, and the statutes sometimes render such marriages void. Under the rules of construction already given, such marriages between persons of different races will be regarded as illegal only when expressly declared to be void. On account of the considerable intermingling of races that has occurred in certain sections of the country, it is often difficult to determine whether a person is a white or a negro, and as a rule this is made to depend upon the terms of the statute. A mulatto is not usually a negro, but is the child of a negro and a white person, not the child of a mulatto and a white. It has been de-

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cided in Virginia that where a negro must have one fourth negro blood, one drop less will make him a white. In North Carolina, however, a person with one eighth, and even with one sixteenth, negro blood has been held to be a negro.

As to a former marriage. A woman cannot have two husbands at the same time; and one who has been married once cannot marry again unless such first marriage was void, or voidable and has been duly avoided by judicial decree, or, if valid, has been dissolved by death or by a decree of divorce or by a legal presumption of death. In most of the States there are statutes providing that where a person has been absent, unheard from, or beyond the seas for a period of five or seven years, the other party to a marriage shall not be punishable for marrying again. As a legal rule, life is presumed to continue for a period of seven years after the person has disappeared; but if a woman, supposing her husband to be dead, marries within seven years and the husband is never heard of afterward, it will generally be presumed not only that he is dead, but that he died before the woman marries again. The statutes which provide that under certain circumstances a bona-fide second marriage will be void only from the time that it is so decreed have been variously construed, but

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the courts will avoid, if possible, a construction that would give a person two spouses at the same time. According to the Spanish law, a woman who enters into matrimony in ignorance that her husband has a wife living, or that there is any other impediment to the marriage, is in law not only innocent of crime, but is entitled to all the rights, incidents, and privileges that pertain to lawful marriage, and these are continued so long as there is ignorance as to the second marriage.

When a woman who is already married goes through the form of a second marriage she may be guilty of the crime of bigamy or polygamy. Bigamy was not a felony at the common law, nor was it a crime of which the ordinary common-law tribunals took cognizance at all. It was originally considered as being exclusively within ecclesiastical jurisdiction. At the present time, generally throughout the United States bigamy and polygamy are crimes by statute.

The section of the Revised Statutes of the United States which defines bigamy, omitting the exceptions, reads as follows:

> Every person having a husband or wife living, who marries another, whether married or single, in a territory or other place over which the United States have exclusive jurisdiction, is guilty of bigamy, and shall be punished by a fine

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of not more than $500, and by imprisonment for a term of not more than five years.

A decree of a court may be obtained where a marriage is void or only voidable. In the case of a void marriage, the parties not being thereby incapacitated for marriage, they may marry again even before and without a decree of nullity. In the case of a voidable marriage, it being void *ab initio* if duly avoided, the parties may marry again after a decree of nullity. But a marriage where there has been a voidable marriage which has not been avoided is both invalid and bigamous.

An absolute divorce, *a vinculo matrimonii*, or from the bonds of matrimony, dissolves the relation of husband and wife, as will be seen more fully in a later chapter, and either party to the marriage may marry again, except where the statute contains a special prohibition. On the other hand, a limited divorce, *a mensa et thoro*, does not of itself dissolve the relation of husband and wife, and neither party can marry again. Such a second marriage, however, although it is invalid, does not constitute bigamy. A prohibition against the marriage after divorce of the guilty party, for a certain time or except under certain conditions, is sometimes contained in a statute, as in the State of New

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York, and is sometimes entered by a court as a part of a decree of divorce under the authority of a statute, as in Maryland. The effect is the same in either case. In some of the States, as in Massachusetts, New York, and North Carolina, the court has been given the power to annul the decree of prohibition and allow the person to marry after the lapse of a certain time, provided that the conduct of the person during that time has been good.

As to the consent of the parties to a marriage. Consent is the very essence of a marriage, and there can be no real marriage without it. A mere ceremony of marriage cannot make a man and a woman husband and wife where they go through the forms of marriage in jest, or regard them as mere preliminaries. Neither does acting as husband and wife toward each other constitute a marriage. Consent to a marriage may be absent owing to error, fraud, or duress. It should be noted that a mistake of person, but of nothing else, affects the validity of marriage, as mistakes as to character, fortune, and health make no difference, the parties taking each other for better or for worse.

The practice of any deceit or false representations which induce consent, especially where the deceived person is weak in mind or young, will invalidate a marriage. The

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fact that a person marries under actual compulsion will also invalidate a marriage. It is not sufficient that a woman marry unwillingly, she must have been forced by a fear of bodily harm.

The meeting of the minds that is essential to a valid marriage may be expressed in words, written or oral, or by signs or implied from conduct. No technical words are necessary, even where the statute requires a solemnization. It need only appear that the man and the woman intend to live together as husband and wife and to produce children under the sanction of the law. It is doubtful whether persons can actually marry by letter, and an attempted marriage by telephone would probably stand on the same footing as attempted marriages by letter. If a legal marriage is the object of the persons, any stipulations that they may make that are inconsistent with the law are simply void. The apparent contract is not affected by a mental reservation of one of the parties. The agreement must be to be husband and wife thenceforth; it must contemplate the present assumption of the marriage state.

As to the ceremonies of marriages: The celebration of marriage was necessary by the canon law prior to the Council of Trent, but was not necessary by the civil law or by the law of Scotland. A ceremony has been de-

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clared necessary by the common law of England in Maryland, Massachusetts, and North Carolina. The contrary has been held by the Supreme Court of the United States in a case arising in Tennessee, and in Alabama, California, Georgia, Illinois, Iowa, Kentucky, Michigan, Minnesota, Mississippi, Missouri, New York, Ohio, Rhode Island, and Pennsylvania. A celebration is necessary by the law of Mexico. All of the American States at the present time have statutes providing for the celebration of marriages, what permission or license must be gotten or notice given before the marriage, who must perform the ceremony, and what record of the marriage must be made. As a rule, such provisions do not affect the validity, but only the legality of a marriage. Whether or not any of such provisions must be complied with in order that a marriage may be valid depends, in the first place, upon whether by the preëxisting common law any such formality was necessary, and, in the second place, whether it were or not, there is a provision in the statute stating that non-compliance with it shall render a marriage void. The necessity of the celebration depends upon the law of a place where the parties marry. Thus, if the parties desire to marry within the State of Maryland, they must not only have a celebration, but a religious one.

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In England, before the Reformation, there could have been no valid marriage without the presence of a priest ordained by a bishop, or afterward without the presence of a priest or deacon. The modern statutes have extended the right to celebrate marriages to the regularly ordained ministers of any religious denomination, and in most of the American States to judges, chancellors, and magistrates. Special provisions have been made for marriages of Friends or Quakers. The parties cannot marry themselves with a ceremony when a celebration is required, as there must be a celebrant. The celebrant must be a third party; a minister cannot marry himself. Wherever the law requires a marriage to be recorded, such a record, or a copy, is direct evidence of the marriage, both in civil and criminal cases; but such a record proves only what is required to be recorded, and is not conclusive. Any person present at the marriage may testify concerning it, whether a third party or the celebrant, and, in general, even the parties themselves.

In asserting a marriage which took place in another country or state, it is customary to prove first the foreign law and then a marriage by contract or by celebration as required by such a law. If the fact of a celebration is proved, it will be presumed to be in conformity with the foreign law.

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What is known as a nullity suit is one that is brought for the purpose of having a void marriage judicially declared to be void, or of having a voidable marriage judicially made void. Nullity suits are frequently in the statutes spoken of as divorce suits, but properly a divorce suit is a suit for the purpose of dissolving a marriage, and the consequences of a divorce are very different from those of a decree of nullity, as the latter does not destroy marriage rights, but declares that they never existed. Jurisdiction in the United States to declare void a marriage that is otherwise valid, as is the case with jurisdiction to grant a divorce, depends entirely upon statute.

A voidable marriage may, in general, be avoided on the application of either party, but the decree must be passed during the lifetime of both of the parties, or the marriage will be binding.

On and after the first day of January, 1902, what is known as a common-law marriage will not be recognized in the State of New York, unless entered into through a written contract of marriage, signed by both parties, and at least two witnesses who shall subscribe to the same, stating the place of residence of each of the parties and witnesses, and the date and place of marriage. The contract must be acknowledged by the par-

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ties and witnesses in the manner required for the acknowledgment of a conveyance of real estate to entitle such a conveyance to be recorded. Such a contract must be filed, within six months after its execution, in the office of the clerk of the town or city in which the marriage was solemnized. Such a contract, or a certified copy, shall be presumptive evidence of the marriage.

This law further provides that no marriage claimed to have been contracted within the State on or after January 1, 1902, otherwise than as therein provided, shall be valid for any purpose whatever; provided, however, that no such marriage shall be deemed or adjudged to be invalid, nor shall the validity thereof be in any way affected, on account of any want of authority in any person solemnizing the marriage, if consummated with the full belief on the part of the persons so married, or either of them, that they were lawfully joined in marriage, or on account of any mistake in the date or place of marriage, or in the residence of either of the parties. This law does away with the so-called common-law marriage which has been recognized in the State of New York since the year 1809.

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PLURAL MARRIAGES OF THE MORMONS

IT is evident that the institution of polygamy among our Mormon population is declining. The anti-polygamy enactments of Congress are now being rigidly enforced, and there is also developing within the Mormon Church a desire for a more liberal interpretation of the dogma of celestial marriage. Yet, while polygamy is dying out as a social institution, it cannot be said to be extinct, and plural marriages are still legal factors in the lives of a number of women, and for this reason, if for no other, they should be included in a study of the legal condition of American women. The Mormon Church, or, more correctly, according to its legal title, the Church of Jesus Christ of Latter-Day Saints, recognizes two kinds of marriage—the temporal and the spiritual. With the first kind of marriage a man and a woman are united for this world only, while with the spiritual marriage the union is eternal. Marriage for eternity is regarded as an everlasting covenant to be husband and wife, and is looked upon as a religious ordi-

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nance of a most sacred character. Temporal marriage is a joining, the spiritual marriage is a sealing process. Temporal marriages are permitted by the church, but they are not encouraged, because persons marrying in this way are considered as performing only half their duty. It is said to be practised chiefly by lukewarm adherents of the faith, by widowers desiring only one wife in heaven, and by widows who were previously joined for eternity to their departed husbands. The church discourages temporal marriage by teaching that the children born of such a marriage by one who has been a widow belong in the next world not to their earthly father, but to the man to whom their mother was sealed eternally—that is, to her first husband. Those who are unsealed, comprising those who never marry and those who marry only for their natural lives, occupy an inferior status in heaven. They are only allowed to become angels—that is, ministering spirits to those who are fully redeemed and glorified. They can have no part in the extension of God's kingdom by helping to people new worlds.

In the marriage code of the Mormon Church there is nothing to prevent a person being married to one party for this world and to another for the next, no matter whether the latter is already married to still

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another person for this life. When this occurs, it is not lawful to assume marital relations on earth, for such relations must be postponed until after the resurrection. A woman can be sealed to only one man, but the same man may be sealed eternally to many women if he so desire and the president of the church approve. The Book of Mormon forbids a man to have more than one wife, but it also states that if the Lord should at any time wish otherwise he would command his people. A subsequent revelation on the eternity of the marriage covenant, including plurality of wives, is said to have been given through Joseph Smith, the prophet, at Nauvoo, Hancock County, Illinois, July 12, 1843. This revelation has constituted the theological sanction for plural marriages.

If a man felt called upon to take the ordinance of plural marriage, he was required to consult the president of the church, whose duty it was to look into the affairs of the candidate and to inquire of the Lord if the step would be pleasing to him. In the event of a favorable response, he was not at liberty to consummate his desire until he had sought the consent of his first wife. If she offered no objection all was well, but if she withheld her sanction, and he failed to win her to his way of thinking after due effort, he was at

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liberty to proceed against her will. When these preliminaries had been gone through, he consulted the woman of his choice, and at the ceremony his first wife, when favorably disposed to the second marriage, presented the new bride to her husband. The ground upon which a man was permitted in this matter to act contrary to the wishes of his first wife was that her obstinacy should not deter him from the performance of a religious obligation.

In 1895, Wilford Woodruff, president of the church, made public a revelation amending the earlier revelation with reference to the celestial order of marriage, and prohibiting the contracting of further polygamous marriages.

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HUSBAND AND WIFE

THE course of modern legislation has tended very generally to do away in its strictness with the fiction of the common law that by marriage a husband and wife become one legal person. By that legal fiction, a woman by marriage was regarded as having lost all legal identity; she became *civiliter mortua*, she was covered by or merged in her husband, and she was called "feme covert," and her condition was called "coverture." Such a fiction was unknown to the civil law, and in the development of the law of equity the fiction of unity was largely ignored. American legislation has tended ever more and more to preserve the legal identity of woman in the married state and to develop her legal personality.

Concerning the general relation of husband and wife there are some interesting declarations to be found in the constitutions and statutes of the several States and Territories. Thus, it is declared in California, Georgia, and New Mexico that the husband is the head of the family, and that the wife is subject to him. It is further declared in

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Georgia that the wife's legal existence is merged in that of her husband, following the rule of the common law, except so far as the law recognizes her separately, either for her own protection, her own benefit, or the preservation of public order. The law of New Mexico is even more declarative; the husband owes the wife "fidelity, favor, and protection." "He should make her a participant in all the conveniences he enjoys." "He should show her the utmost and every attention in case of sickness, misfortune, or accident, and provide for her the necessaries of life according to his condition or ability." It is also declared that the wife owes fidelity and obedience to the husband, and that she is obliged to live with him. In California and Louisiana it is declared that the husband and wife contract toward each other obligations of mutual respect, assistance, fidelity, and support. In California and the Dakotas it is declared that the husband may choose any reasonable place or mode of living, and the wife must conform thereto; while Louisiana declares that the wife is bound to live with her husband, and to follow him wherever he chooses to reside; also that the husband is obliged to receive her, and to furnish her with whatever is required for the convenience of life, in proportion to his means and condition. In Louisiana a wife cannot

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appear in court without the authority of her husband, although she may be in trade as a merchant, or possess her property separate from her husband. The States of California, Nevada, and the Dakotas have declared that the wife must support the husband, when he has not deserted her, out of her separate property when he has no separate property and there is no community property and he is unable from infirmity to support himself.

In New Mexico both the husband and the wife have a process in the courts to compel the other to perform such duties as are specified.

It is a very general rule of the statute law in the United States that a husband or his separate property is not liable for the debts of the wife contracted before her marriage, and in many of the States the husband is not liable on any cause of action against the wife which originated prior to the marriage. But in a few States the husband is liable for such debts to the extent of any property acquired from the wife by any agreement made before marriage, as in New York and West Virginia; or to the extent of any property received by him from or through the wife, as in the States of Indiana, Kentucky, Missouri, Colorado, and Georgia. As a general principle of law, the husband is not liable on his

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wife's contracts in respect to her separate property, trade, business, labor, or services, and so it is expressed in the States of Massachusetts, Connecticut, New York, Indiana, Michigan, Arkansas, and the Territory of Arizona. In Massachusetts and Arkansas the husband is not liable on any judgment recovered against the wife alone. In Georgia it is declared that the husband's consent is to be presumed to the wife's agency in all purchases of necessaries suitable for her condition, made for the use of herself and her family; such a presumption, however, may be rebutted by proof. The code of California in this matter reads: "If the husband neglects to make adequate provision for the support of his wife, any other person may in good faith supply her with articles necessary for her support, and recover the reasonable value thereof from the husband." The Connecticut law declares that the husband's property is to be first applied to satisfy any joint liability of the husband and the wife for the support of the family, and that the wife is entitled in equity to an indemnity for property of her own taken for such a purpose.

As a general rule, a husband is not liable for the torts—that is, for the actionable wrongs—committed by his wife, except when

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committed under his actual coercion, or when he would be liable if the relation of marriage did not exist.

On the other hand, a wife is not generally made liable, nor is her separate property liable, for the debts of her husband. It is declared that the separate property of the wife is not bound by any judgment or execution against the husband in the States of Massachusetts, Vermont, Maryland, Kentucky, Missouri, the Dakotas, and Montana. But it is declared that both the husband and the wife are equally liable for the expenses of the family and for the education of the children, and either or both may be sued in Connecticut, Illinois, Iowa, Oregon, Washington, Alabama, and New Mexico. In the State of Montana a wife is liable for all necessaries procured for the use and benefit of herself and of her children under eighteen years of age. In the States of Pennsylvania and Alabama a debt for necessaries furnished to the family may be enforced against the property of the wife, after an execution against the husband is returned unsatisfied.

It is the general rule that the debts of a wife contracted before marriage may be enforced against her and against her separate property after marriage. Also the debts of a wife contracted by her after marriage may be enforced against her and her separate

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property. A judgment may be recovered against the wife in her own name in Maine, Rhode Island, and Ohio; or she may be sued jointly with her husband in Maine, Rhode Island, Maryland, and Alabama.

A married woman, with her separate property, is liable for torts committed by her, and the statutes so declare in the States of Maine, Connecticut, Indiana, Illinois, Iowa, Minnesota, Washington, and in the Territory of New Mexico.

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TORTS OF A PERSONAL NATURE

AT the common law, as a general rule, where an injury to the rights of the person, such as injuries to health, reputation, or liberty, is inflicted upon a married woman, an action may be maintained in the name of the husband and wife for damages where the ground of the action is the wife's personal pain or suffering, either physical or mental, or both. Such an action would be regarded at the common law as the action of the wife, subject to a right on the part of the defendant of insisting on having the husband joined. But at the common law, if the damages are collected during the coverture they become the absolute property of the husband. If, however, the husband should die before or during the pendency of the suit, the damages will belong to the wife, and will not go to the administrator of the husband's estate; so, also, the cause of action survives to the wife, and she may prosecute the suit to judgment and to execution. But upon the death of the wife the action will not, at common law, survive to the husband, nor even to the wife's administrator. By force of statutes,

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however, as in the States of Maine and Vermont, such an action survives to the wife's administrator.

Under the statutes of the various States relating to married women, usually the sole right of action is given to the wife for torts committed against her, and it is the prevailing rule that she is required to bring suit in her own name. In the States of Louisiana and Texas, under statutes, the cause of action for the recovery of damages for injury to the person of the wife is regarded as community estate, and such estate being represented by the husband, the right to sue for such injuries is vested in him, and must be asserted by him, unless there is evidence of exceptional facts indicating that the wife's rights and necessities require that she should receive the aid of the court. But a mere separation of the husband and wife, and his refusal to join her in the action, is not sufficient to change the rule. In California, although the right of action and the damages recovered are community property, both the husband and wife are necessary parties. Where the injury to the wife is such that the husband sustains a separate loss or damage, as, for example, where he is put to expense or is deprived of the society or the services of his wife, he is entitled to recover damages, and he may bring a separate action in his

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own name, but unless based upon a statute no such damages can be recovered in an action by the wife alone or by the husband and wife jointly. Usually the husband has no right of action for damages for the death of the wife as the result of an injury, except as the executor or administrator of her estate. It has been held, however, in New York and Indiana that where a cause of action would exist if the wife had lived, if she survives the injury even for a few days the husband may maintain an action for the loss of the society and services of the wife during that time.

In general, a husband is entitled to the society, comfort, and assistance of his wife, and whoever, by the alienation of her affections, deprives him thereof commits a tort against the husband for which damages may be recovered, and this is so although the wrong is done by a parent of the wife. What is known as the "loss of consortium" is the main basis for all actions of this kind, and by this term is understood the loss of the congenial society, affection, and assistance of the wife. There is a right of action to the husband even for the partial alienation of his wife's affections, and it has been said that even if a wife has no affection for her husband another person has no right to interfere and prevent any chance of its springing up in the future, and a person so interfering

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is liable on an action for damages. It is frequently charged in actions for alienation of affections that the defendant has either harbored the wife, or enticed her away, or induced her to abandon her husband, but the alienation of affections for which the law gives a redress may be accomplished notwithstanding the continuous residence of the wife under the husband's roof. Indeed, it would seem that such a continued residence only contributes an aggravation to the injury, where an elopement might be an alleviation. Nor is it necessary, in order to maintain such an action, that it be shown that the defendant has debauched the wife. It is, of course, a general principle of law that no one can maintain an action for a wrong when he consents or contributes to the acts which cause the loss. Under this principle the consent of the husband to the acts of the wife will act as a bar to an action for the alienation of the wife's affections.

As a general rule, the measure of damages in an action for the alienation of a wife's affections is the value of her conjugal society, affection, and assistance, less the value of the husband's duty to support, clothe, and care for her when this duty has not been discharged by the husband, as in a case where the wife is living apart from the husband. It is sometimes held, also, that the husband

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may recover for the injury done to his feelings, and for the disgrace and dishonor brought upon him and upon his family. In a case where the defendant wilfully and maliciously committed the injury, the plaintiff, in addition to compensating damages, is entitled to damages as a punishment to the defendant and as an example to others. Such are called exemplary damages. Proper evidence which tends to show that the plaintiff has suffered, as a matter of fact, less injury than might be inferred from the act complained of will be received in mitigation or reduction of damages.

Whether at the common law a married woman has the right to maintain an action for the alienation of her husband's affections seems to be disputed. She often is allowed this right under married womens' acts, as in the States of Illinois, Iowa, Michigan, Minnesota, New Hampshire, and Ohio. As in the case of actions for the alienation of wives' affections, the wife's right of action rests upon the "loss of consortium." In an action of this kind by a married woman it is necessary to prove, in addition to the fact of alienation or the fact of the husband's infatuation for the defendant, that there has been a direct interference on the part of the defendant, and the burden of proof is on the plaintiff to show such interference. There

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seems to be a distinction drawn between an action against a stranger and an action against the parents of the husband. Parents are regarded as under an obligation by the law of nature to relieve their children when in distress; accordingly, it appears that although a parent directly interferes, the wife will have no cause of action against the parent, although the result of the parent's action is the alienation of the husband's affections, if he acts in good faith, and the motive of the parent in such a case is presumed to be good until the contrary is shown.

In an action for the alienation of the husband's affections the plaintiff may recover for the loss of the husband's support, affection, society, and protection, and for anxiety, mortification, and injury to her feelings. The amount of damages is to be determined by the jury in their sound discretion, inasmuch as actual measurement is not possible.

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THE RIGHT OF A WIFE TO SUPPORT

A NORMAL feature of the contract of marriage is the support of the wife by the husband during marriage. Such a right to a support results naturally from the more dependent position of a woman in married life, removed as she is, to a greater or less extent, from the opportunities of earning a livelihood by her own exertions. As, however, the obligations arising from the marriage contract are not sufficiently realized by men to produce always this normal relation, a body of legislation has developed that is in a way supplementary to the recognition by the law of the institution of marriage, and which defines with greater or less detail the legal right which a wife possesses of support from her husband during marriage. Such legislation is but a part of a general development of American statute law during the nineteenth century, having for its object the recognition of the greater legal individuality of women.

Very nearly all of the States at the present time have embodied in the statute law

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some specific recognition of the right of a married woman to some support out of the property of her husband, and the exceptions in this respect appear to be the States of Alabama, Arkansas, California, Idaho, Mississippi, Tennessee, and Wyoming, and the Territory of New Mexico.

The provision of the law of the State of Colorado may be taken as indicative of the general spirit of legislation in this matter. It is declared to be unlawful for any man residing in that State wilfully to neglect, fail, or refuse to provide a reasonable support and maintenance for his wife and minor children, and any person guilty of such neglect, upon the complaint either of the wife, the chairman of the Board of County Commissioners, or the agent of the Humane Society, and upon a conviction thereof, shall be adjudged guilty of a misdemeanor and shall be committed to the county jail for not longer than a period of sixty days, unless it shall appear that, owing to physical or other cause, he is unable to furnish such support. (Session Laws, 1883, p. 126.)

In Connecticut it is provided that if a husband neglect to support his wife he may be committed to the workhouse or county jail and sentenced to hard labor for not longer than sixty days, unless he can show good cause why he is unable to furnish such sup-

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port, or unless he can furnish a bond or such a sum toward such support as the court may require, for a term of six months after the date of conviction. If the husband neglects to comply with the terms of his bond the selectmen of the town shall furnish support to the wife and children to the extent provided for in such bond.

In the State of Delaware, for failure to support his wife and minor children a man may be fined from ten to one hundred dollars. By another law the husband may be arrested and required to give bail of not more than five hundred dollars. The court may order him to pay to his wife a reasonable support, not exceeding one hundred dollars a month, and to give security to the State for the performance of this duty.

In Florida, if any husband having the ability to maintain or to contribute to the maintenance of his wife or minor child shall fail to do so, the wife, living with him or apart from him through his fault, may obtain such a maintenance or contribution upon a bill being filed and a suit prosecuted as in other chancery causes. In Georgia the husband must furnish the necessaries suitable to his condition in life. The same is true in the State of Illinois. In this State, however, the husband has the same right of support out of the wife's property. A failure to support

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wife and children under twelve years of age is a misdemeanor, and may be punished by a "fine not less than one hundred nor more than five hundred dollars, or imprisonment in the county jail, house of correction, or workhouse not less than one month or more than twelve months, or both such fine and imprisonment."

In the State of Indiana a wife may sue for support, first, if deserted by her husband and left without means of support; second, if he has been convicted of a felony and put in State's prison; third, when he is a habitual drunkard; and, fourth, if he joins a religious society prohibiting marriage. The court may award necessary support to the wife according to circumstances; it may order the sale of the husband's lands, or it may allow the wife to sell her lands without her husband joining.

The State of Iowa has declared that the support and education of the family are chargeable equally on the husband and wife's property. In Kansas the husband is obliged by law to support his wife according to his means. If he fails to support her she may have alimony decreed to her by the court where the cause exists for which a divorce may be granted. In Kentucky, while the husband is expected to furnish the necessaries according to his condition in life, yet if he

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has no property except his wages there does not appear to be any legal provision whereby he can be punished for non-support. The law of Louisiana obliges a husband to furnish his wife with whatever is required for the convenience of life in proportion to his means and condition. By the Maine law, if the husband lives apart from his wife and children, and if the separation was without fault of the wife, the court may order him to make reasonable contribution toward the support of his wife and family, and enforce obedience by appropriate decrees. In Maryland non-support is a misdemeanor, and can be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail.

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THE GUARDIANSHIP OF CHILDREN

THE use of mothers equally with fathers in the guardianship of minor children is seen, by a study of American legislation, to be a recent development, and the use obtains at the present time in only seven of the States—namely, Colorado, Kansas, Maine, Nebraska, New York, Pennsylvania, and Rhode Island. In the remaining States the preference is given to the father.

In Colorado both parents are declared to be joint guardians, with equal powers. In Kansas the father and mother are declared the natural guardians, and if either dies or is incapable of acting in such a capacity, the natural guardianship devolves upon the other parent. In case of the death, absence, or incapacity of the father, the mother may appoint a guardian of the property of a minor child, if deemed suitable by the court. In Nebraska the last surviving parent may be by will appointed a guardian for any of the children, whether born at the time of the making of the will or afterward. In New York the conditions of guardianship were made equal in the year 1860; the law was repealed in 1862, and was reënacted in 1893.

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In Pennsylvania, since 1895, the mother is made equal guardian of a minor child if she contributes by her labor or otherwise to its support.

Among the other States there is the usual diversity of provisions creating unequal rights of guardianship between father and mother.

In Alabama the father may by will appoint a guardian for a minor child, but such an appointment must be claimed within six months after the will is admitted to probate. Otherwise the mother is entitled to the custody of the person of the ward, if a girl, until she is eighteen years of age; if a boy, until he is fourteen years. In Arkansas the mother is entitled to the guardianship of a minor child only if the father is not living, having custody of both the person and the property of the ward, unless the property is derived elsewhere than from the mother.

The law in Arizona is remarkable. The father, if living,—if not, the mother while she remains unmarried and if suitable,—is entitled to the guardianship of a child. A guardian of the person or property, or both, of a child born, or likely to be born, may be nominated by will or deed to take effect upon the death of the parent so nominating: first, if the child is legitimate, by the father with the written consent of the mother, or by

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either parent if the other is dead or incapable of acting; second, if the child is illegitimate, by the mother. In California, if the father is not living, the mother, while she remains unmarried and if suitable, is entitled to the guardianship of the child. In Connecticut, if the father is not living, the mother may be appointed guardian; also if she has been abandoned by her husband. The parents may appoint a guardian by will who would be entitled to the guardianship if living, but if the custody of a child has been given to the mother by the Supreme Court or the General Assembly, she alone has the power of appointing a guardian by will.

In Delaware the father alone may appoint a guardian by his will. The same is the rule in Florida. In Georgia the mother is the guardian only if the father is dead. He may appoint by will, and so may the mother if widowed, but only for such children as have no guardian and as to such property as they may inherit from her. In Idaho the law is the same as in Arizona. In Illinois the father may appoint a guardian by his will for a child born, or likely to be born, provided that no such appointment shall deprive the mother of the custody and tuition of the child without her consent, if she be a fit person to have such a charge. The mother, if widowed and sane, may appoint a guardian

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by her will. In Kentucky, the father may appoint a guardian by his will for his infant child, and may select a different one for the estate and for the nurture and education. The court, in making the appointment, shall choose the father, or his testamentary appointee; then the mother, if unmarried; then the next of kin, giving preference to the males. By the code of Louisiana, the mother only becomes a guardian upon the death of the father. If the mother marries again, her second husband becomes guardian, and the mother loses all right to appoint any other guardian by her will. A mother in Maryland is the guardian only if the father is dead and did not appoint a guardian by his will. In Massachusetts the mother is guardian only if she is so appointed by the court in the case of a legal separation or a divorce. In Michigan, the father is guardian, if living. He may also appoint a guardian by will, but if the mother is living she may present objections before the appointment is confirmed by the judge of probate, and such an appointment may be appealed. The mother may appoint a guardian by her will, if the father did not do so by his.

The law of Montana declares that as between parents claiming guardianship, "neither parent is entitled to it as of right," but, other things being equal, if the child be of

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tender years it should be given to the mother, and if it be of an age to require education and preparation for labor or business, then to the father.

In New Jersey the father is guardian of the estate of a minor, but he cannot convey any portion of the estate without the mother's consent. In the case of a separation, and no misconduct on either side, the rights of father and mother are held to be equal after a child is seven years of age. If a widow, the mother is guardian. In South Dakota the father is guardian, and has the custody of the person and services of a minor child, but he cannot transfer such a custody to any one except the mother without her written consent, unless she has deserted him or is living apart from him by an agreement. In Texas, if the parents live together the father is the natural guardian of the persons of the minor children, and is entitled to be appointed the guardian of their estates. If the parents do not live together, their rights of guardianship are equal, and may be assigned to either parent for the good of the children.

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THE ADOPTION OF CHILDREN

BY far the larger number of adoptions of children in the United States are undertaken by married and single women. The legal aspects, therefore, of this institution come properly within a study of the legal rights and obligations of American women, and are of no less practical importance than many other themes.

Adoption is the act by which relations of maternity or paternity and affiliation are recognized as legally existing between persons not so related by nature. The legal institution of adoption is not recognized by the common law, and exists in the United States only by force of special statutes. Statutes providing for adoption have been enacted in almost all of the States of the Union. Generally, any woman being an inhabitant of the State and twenty-one years of age may adopt. The adoptor must be forty years of age in Louisiana; competent to make a will, in Iowa. If the adoptor has a wife or husband, he or she must consent or join in the petition or other instrument, if competent, in the States of New Hampshire, Massachu-

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setts, Maine, Vermont, Rhode Island, Connecticut, New York, New Jersey, Ohio, Illinois, Michigan, Wisconsin, Minnesota, Delaware, Kentucky, Missouri, California, Oregon, Nevada, Colorado, Washington, the Dakotas, Idaho, Utah, and Louisiana. In Massachusetts and Louisiana the person adopted must be younger than the person adopting; and it must be a child in the States of New Hampshire, Maine, Rhode Island, Pennsylvania, Illinois, Wisconsin, Minnesota, Nebraska, Delaware, Missouri, Oregon, Nevada, Colorado, Utah, Alabama, Florida, Louisiana, and the Territory of New Mexico. No woman can adopt her own husband in Massachusetts; or her own child in Illinois, Wisconsin, Iowa, Minnesota, and Washington; or a brother or sister, whether of the whole or half blood, or an uncle or aunt in Massachusetts; nor a man his illegitimate children, whom the law prohibits him from acknowledging, in Louisiana. By the law of the State of Nevada no Mongolian can either adopt or be adopted. It would seem by the law of Illinois that only an orphan can be adopted, or a child both of whose parents have deserted it for at least one year. In New Jersey, Idaho, and Louisiana the person adopting must be at least fifteen years older than the person adopted, and at least ten years older in California, Nevada, and

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the Dakotas. In North Carolina an adoption may be made either for life or during the minority of the child.

The mode of adoption provided by statute in most of the States is by petition to the probate or other like court, reciting the necessary facts. A decree is made by the court, based upon these facts, which judicially confers upon the child the capacity to inherit, and all other incidents of the status authorized by the statute of the particular State. This is distinctly a judicial procedure, involving the rendering of a judgment by the court by which the new status of the child is determined. In any case, whether a judgment of adoption be granted is discretionary with the court. In some of the States adoption is effected by a mere deed stating the fact of adoption, signed and sealed, acknowledged before a judge, and recorded with the clerk of probate or register of deeds for the county where the person adopting resides. This is the law in the States of Pennsylvania, Missouri, Wyoming, and Alabama, and in the Territory of New Mexico.

The consent of the child or other person to be adopted must in most of the States be obtained if such person be over fourteen years of age, or over twelve years of age in the States of New York, California, Nevada, the Dakotas, Idaho, and Arizona. In order

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to constitute a valid adoption under the statutes, the written consent of a child's natural parents must be obtained, if living, or the consent of the survivor, if one is dead, provided that they are known and not hopelessly intemperate or insane, and have not abandoned the child. In the State of New York the necessity for consent or notice to a parent is dispensed with if such parent has been deprived of civil rights; and the same rule holds in Rhode Island and Oregon, where such parent is put in prison for more than three years. Many of the statutes, while requiring the consent of one spouse to the adoption of a child by the other, fail to authorize expressly the joint adoption by husband and wife. But wherever adoption proceedings have been attacked on the ground of being an attempt at joint adoption, a proceeding that the statute did not authorize, such an adoption has been held valid. A child adopted by a woman in one State in accordance with the laws of that State while she was domiciled there, will after removal into another be recognized as the legal child of the adopting parent in the latter State for the purpose of inheriting property there.

As a rule, the name of the person adopted may be changed by the decree, deed, or other instrument to that of the person adopting,

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and the general effect of adoption is to put the parties in the relation of parent and child, with all of the legal consequences. The natural parents are so divested of all their legal rights in respect to the child. In many of the States the adopting parent, or the person adopted, by his next friend may appeal to the Superior or Supreme Court to have the decree of adoption set aside. The statutes of some of the States provide that a parent who has not given his or her consent to adoption proceedings and was not served with a notice may appeal from the decree of adoption within a specified time. It has been ruled that where the mother of the child is a party to adoption proceedings, and gives her consent to the same, the father who has abandoned the child is not entitled to notice of the proceedings, nor is his consent to the adoption necessary.

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DIVORCE

BY a divorce is understood an action at law by which the parties to a marriage are put back into the position of single persons, except so far as their rights of property, remarriage, etc., may be affected, without necessarily rendering their children illegitimate or their marriage invalid while it lasted. An absolute divorce is in most of the States termed a divorce *a vinculo,* or from the "bond" of marriage, or simply a divorce in those States in which no action for a limited divorce is recognized. The State of South Carolina has no divorce laws, although in a few cases marriages may be annulled. There are at the present time in the aggregate of the legislation of the several States a total of forty-two recognized causes for which an absolute divorce may be granted, although no one State happily recognizes even one half of this number. In many of the States divorces may be obtained for causes that in other States are recognized as grounds for having a marriage annulled or declared void. If we omit such causes, there appear to be

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six grounds that are generally recognized as causes for a divorce—namely, adultery, cruelty, desertion, drunkenness, imprisonment on conviction of crime, and neglect to provide.

So varied and confusing is the legislation of the several States with reference to divorce that any general grouping of the States on a classification of causes is unsatisfactory, and a consideration of the condition of the law in each State becomes necessary to a proper treatment of this subject.

ALABAMA

In this State a divorce may be granted to either the husband or the wife for the causes of adultery, impotency, voluntary abandonment for a period of two years, imprisonment for a period of two years in a State penitentiary, the sentence being for a term of seven years or longer, and crimes against nature, committed either before or after marriage. To a husband a divorce may be granted because of the pregnancy of the wife at the time of the marriage without either his agency or his knowledge. To a wife a divorce may be granted because of the habitual drunkenness of the husband, if the habit did not exist at the time of the marriage to the wife's knowledge, and also for actual vio-

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lence committed upon her by the husband sufficient to cause danger to life or health, or for conduct that causes a reasonable apprehension of such violence.

If the defendant to an action for a divorce is not a resident of the State, the plaintiff must have resided within the State for a period of one year.

TERRITORY OF ARIZONA

A DIVORCE may be granted to either a husband or a wife for the causes of adultery, voluntary abandonment for six months, excesses, cruel treatment or outrages toward the other by personal violence or by any other means, and a conviction, after marriage, of a felony and imprisonment in any prison. No suit for divorce, however, can be begun until six months after a final judgment of conviction, and neither party shall have been convicted upon the testimony of the other, and no pardon subsequently granted shall interfere with a right to secure a divorce.

A divorce may be granted to a wife because of the husband's habitual intemperance for a period of six months, or because of the husband's wilful neglect to provide for his wife the necessaries and comforts of life for a period of six months, when he has

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the ability to provide the same, or fails to do so by reason of his idleness, profligacy, or dissipation. The plaintiff must have been a bona-fide resident of the Territory, and a resident for six months next preceding in the county where the suit is brought. Marriage may be declared void for impotency, or for any other impediment that renders the marriage contract invalid from the beginning.

ARKANSAS

A DIVORCE may be granted to either a husband or a wife for the causes of adultery, bigamy, impotency, wilful desertion for a period of one year without reasonable cause, conviction of a felony or other infamous crime, habitual drunkenness for a period of one year, and barbarous treatment that endangers life, or such personal indignities as to render the condition of the applicant intolerable. In 1895, insanity developing after marriage as a ground for a divorce was repealed.

The plaintiff in an action for a divorce must have resided within the State for a period of one year. The cause for divorce must have occurred within the State, or, if without the State, it must have been a legal ground for a divorce where it did occur, or the residence of the plaintiff must then have

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been in that other State. In any case, the cause must have occurred within five years of the time the action is brought.

We note also that in this State five years' absence, unheard from, beyond the limits of the State is a legal justification for a second marriage. Marriages are declared to be void for consanguinity, and also when contracted between persons of the white and black races. Marriages may be declared null and void for consent obtained by force, for lack of legal age, for lack of understanding, or for physical incapacity.

CALIFORNIA

In this State the causes for a divorce are adultery, extreme cruelty, wilful desertion or wilful neglect for a period of one year, and conviction of a felony. A wife who has been deserted may bring an action against her husband for the separate maintenance of herself and her children, without seeking a divorce, if she prefers to do so.

The plaintiff must have been a resident of the State for a period of one year, and of the county in which the action is brought three months next preceding the commencement of the suit. Fraud on the part of the wife regarding her pregnancy cannot be made a ground for a divorce; neither can any false

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representations on the part of the husband as to his character or property. A marriage may be annulled for bigamy, for impotency, or for unsoundness of mind at the time of the marriage; also for a want of legal consent to the marriage, and for a consent obtained by force or fraud.

COLORADO

THE causes for a divorce in this State are adultery, bigamy, impotency, wilful desertion for a period of one year without a reasonable cause, wilful desertion and departure from the State without an intention of returning, habitual drunkenness for a period of one year, conviction of a felony or other infamous crime, extreme cruelty, the failure of the husband for a period of one year, being in good bodily health, to make a reasonable provision for the support of his family.

The plaintiff must have resided for a period of one year within the State, except when the grounds for the divorce are adultery or extreme cruelty when committed within the State, providing that the suit shall be brought within the county in which such plaintiff or defendant resided or in which the defendant last resided.

The court may in its discretion reopen a

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case within a period of one year upon good reason shown by a defeated party. Neither party can remarry before the expiration of one year.

CONNECTICUT

The grounds for a divorce are adultery, fraud in the contract of marriage, a wilful desertion and total neglect for a period of three years, a seven years' absence unheard from, intolerable cruelty, habitual intemperance, a sentence of imprisonment for life, and any infamous crime involving a violation of conjugal duty and punishable by imprisonment in the State prison.

The plaintiff must have resided for a period of three years within the State unless the cause for the divorce shall have arisen subsequently to the removal into the State or unless the defendant shall have continuously resided within the State for a period of three years next before the date of the complaint, and actual service shall have been made upon him, or unless the cause is habitual intemperance or intolerable cruelty, and the plaintiff was domiciled within the State at the time of the marriage and before bringing the complaint has returned to this State with an intention of permanently remaining.

Whenever, for any cause, a marriage is void, the Superior Court may, upon com-

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plaint, issue a decree declaring such a marriage void, and may take such order regarding the care of any children and alimony as it may make in a suit for divorce.

DELAWARE

In this State the causes for an absolute divorce are adultery, desertion for a period of three years, habitual drunkenness, impotency, extreme cruelty, a conviction either in or out of the State, after marriage, of a crime that is classed as a felony by the laws of the State of Delaware, whether such a crime shall have been perpetrated before or after marriage. An absolute or a limited divorce may be granted, in the discretion of the court, if in the procurement of a marriage there was a lack of sufficient age of either party, if such a marriage has not been voluntarily ratified after both of the parties have attained the legal age, or for a wilful neglect on the part of the husband, for a period of three years, to provide the wife with the necessaries of life suitable to her condition.

A divorce obtained by an inhabitant of the State of Delaware in another State, but for a cause that occurred in Delaware or for a cause which would not be a ground for a divorce in Delaware, is of no effect within that State. Nor can a divorce be decreed if

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the cause arose out of the State and at the time the petitioner was not a resident of Delaware, unless for the same or a like cause a divorce would be granted in the State or country where it occurred.

A husband or a wife divorced for adultery may not marry the person with whom the crime was committed. Marriages may be annulled for consanguinity or affinity, or when between whites and negroes or mulattoes, or for bigamy, or when either party at the time of the marriage was insane.

DISTRICT OF COLUMBIA

An absolute divorce may be granted for bigamy, lunacy, or impotency at the time of marriage, for adultery, habitual drunkenness for a period of three years, extreme cruelty endangering life or health, and for wilful desertion and abandonment for a period of two years. Either a limited or an absolute divorce may be granted for cruelty or upon evidence to the satisfaction of the court of a reasonable apprehension of bodily harm. If the cause for divorce occurred outside of the District, the plaintiff must have lived within the District for a period of two years next preceding the bringing of the suit. Marriages are void within the prohibited degrees of relationship and because of lunacy.

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FLORIDA

No limited divorce may be granted in this State. A wife may sue for alimony, without a divorce, if any cause for a divorce other than bigamy exists, and she, at the time, is living apart from her husband.

The causes for a divorce are adultery, bigamy, impotency, desertion for a period of one year that is obstinate and wilful, extreme cruelty, habitual intemperance, habitual indulgence in a violent and ungovernable temper, where the parties are within the prohibited degrees of relationship, and also where the defendant has obtained a divorce in any other State. The plaintiff must have resided within the State for a period of two years next prior to the commencement of the suit.

GEORGIA

In this State the causes for an absolute divorce are adultery, wilful desertion for a period of three years, cruel treatment, habitual intoxication, the marriage of persons who are within the prohibited degrees of relationship, mental incapacity, impotency at the time of the marriage, any fraud, force, menace, or duress in obtaining the marriage, a conviction and an imprisonment for a term of two years or more for a crime involving

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moral turpitude, and also the pregnancy of the wife at the time of the marriage without the husband's agency or knowledge.

One year's residence within the State is necessary for the petitioner. The trial of a suit for a divorce is by a jury, and the verdict may be for either a total or a limited divorce. A total divorce, however, can be secured only if two juries, at different terms of the court, unite in a verdict in favor of it. The second jury, by its verdict, settles the division of property.

The marriage of persons who are legally unable to contract may be declared void on grounds of consanguinity, impotency, lunacy, lack of age, force, or fraud.

IDAHO

THE grounds for a divorce are adultery, extreme cruelty, a wilful desertion for a period of one year, wilful neglect or habitual intemperance for a period of one year, a conviction of felony, and permanent insanity, provided that the defendant has been regularly confined in an asylum for the insane for a period of at least six years next preceding the suit, and that the plaintiff shall have been an actual resident of the State for six years. For the other causes a residence of six months within the State is sufficient.

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Marriages may be annulled for want of age, for bigamy, mental unsoundness, for consent obtained by force or fraud, and for impotency existing at the time of the marriage.

ILLINOIS

DIVORCE may be obtained for adultery, bigamy, impotency, extreme and repeated cruelty, a conviction of felony or other infamous crime, desertion for a period of two years without any reasonable excuse, or an attempt on the life of the plaintiff by poison or other means showing malice. The plaintiff must have resided within the State for one year, unless the cause occurred within the State or while one or both of the parties resided there.

A wife may sue for a separate maintenance without a divorce, and if poor she may sue without cost. Marriages are to be declared void between those within the prohibited degrees of kinship, including first cousins, and because of insanity or idiocy at the time of the marriage.

INDIANA

THE causes for a divorce in this State are adultery, impotency, cruel and inhuman treatment, abandonment for a period of two years, conviction after marriage of infamous crime, habitual drunkenness, and the failure

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of the husband for two years to make reasonable provision for his family.

The plaintiff must have been a resident of the State for a period of two years and of the county for six months next preceding the suit.

The man or woman obtaining a divorce cannot marry again for two years, during which time the defendant, for a just cause, may reopen the case. Adultery is declared not to be a sufficient ground for a divorce, unless the petition is filed within two years after a knowledge of the fault.

Marriages that are prohibited by law for consanguinity, for racial differences, or marriages that are bigamous, are void, without a divorce proceeding, if they are solemnized within the State.

If a wife is deserted and her husband has property she may sue and obtain support; so also if her husband has been convicted of a felony and been put in a State prison, or if he is an habitual drunkard, or if he joins a religious sect the creed of which prohibits marriage.

IOWA

The causes for a divorce are adultery, inhuman treatment that endangers life, desertion for a period of two years without a reasonable cause, a conviction of a felony after mar-

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riage, and the pregnancy of the wife at the time of the marriage unknown to the husband, unless he also had an illegitimate child living at the time of the marriage unknown to the wife.

The plaintiff must have resided for one continuous year within the State, unless the defendant is also a resident and has been served with a personal notice of the petition. Marriages may be annulled for impotency, bigamy, insanity and idiocy, and if prohibited by law as being within the forbidden degrees of relationship. In the case of a bigamous marriage, if the husband and wife live together after the death of the former wife or husband the marriage then becomes valid.

KANSAS

In this State a divorce may be obtained for the causes of adultery, bigamy, impotency, an abandonment for a period of one year, extreme cruelty, a conviction of a felony and an imprisonment in the penitentiary therefor, habitual drunkenness, gross neglect of duty, fraud in the marriage contract, and the pregnancy of the wife at the time of the marriage unknown to the husband.

The plaintiff must have resided within the State for a period of one year. Neither the husband nor the wife can marry again until six months after the decree of divorce is pro-

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nounced, during which period, and for sufficient reason, the case may be opened again. A wife may sue for alimony without a divorce. A marriage may be declared void if either party is incapable, from want of age or understanding, of contracting a marriage.

Marriages are prohibited between the white and the colored races, also if bigamous, for consanguinity, also with idiots or lunatics, if either of the parties is under the legal age, and also when not solemnized in the presence of an authorized person or society.

KENTUCKY

THE causes for a divorce are adultery, impotency, an abandonment for a period of one year, a conviction of a felony either in or out of the State, force, duress, or fraud in the marriage contract, a loathsome disease concealed at the time of the marriage or contracted afterward, and uniting with a religious society whose creed forbids marriage.

A divorce may be obtained by the wife, when not in a like fault, for a confirmed habit of drunkenness continuing for a period of one year, coupled with a wasting of his estate by the husband and a failure to provide a suitable maintenance for his wife and children; for such an habitual and cruel treatment for a period of six months as indicates a settled aversion toward her and that tends

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to destroy permanently her peace and happiness; also for cruel beating or injury or attempt at injury, indicating an ungovernable temper, and involving a probable danger to her life.

A divorce may be obtained by the husband for the pregnancy of the wife at the time of the marriage unknown to him, for such lewd behavior as proves the wife to be unchaste "without actual proof of an act of adultery," and, when the husband is not in like fault, habitual drunkenness for a period of one year. The plaintiff must have resided within the State for a period of one year. If the act complained of occurred outside of the State, the plaintiff must have been an actual resident of the State of Kentucky at the time of its occurrence, unless the act was also a cause for divorce in the country where it occurred. In any case, an action must be begun within five years of the occurrence of the offense.

The court may grant a limited divorce for any cause that it may deem sufficient. Marriages are void and are prohibited if they are bigamous.

LOUISIANA

An immediate and absolute divorce may be granted for the two causes of adultery and a sentence to an infamous punishment.

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For the other causes—which are abandonment for a period of five years, habitual intemperance, excess, cruel treatment, or outrages such as render living together insupportable, public defamation, or attempts on the life of the other—a decree of temporary separation may be given, which may be followed by a decree of absolute divorce one year later if no reconciliation has in the meantime taken place.

When the ground for a divorce is adultery, the guilty one cannot marry his or her accomplice, under penalty of the crime of bigamy and of a decree of nullity upon the new marriage. Marriages between white persons and negroes to the third generation are void. An absence of ten years unheard from is a justification in law for contracting a second marriage.

MAINE

The causes for a divorce are adultery, impotency, extreme cruelty, an utter desertion for three consecutive years next prior to the filing of the bill, gross and confirmed habits of intoxication, and cruel and abusive treatment.

There is a cause to the wife where the husband, being of sufficient ability, grossly or wantonly or cruelly refuses or neglects to provide a suitable maintenance for her. The

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parties must have been married in the State or lived there after their marriage, or the plaintiff must have lived there when the cause occurred, or must have resided within the State for one full year before bringing suit. The marriage of persons within the prohibited degrees of relationship, marriage with an insane person or an idiot, and also bigamous marriages, if solemnized in the State, are void.

Marriages between a white person and a negro, mulatto, or Indian may be annulled, and also for the grounds of bigamy, want of legal age, and insanity or idiocy existing at the time of the marriage.

MARYLAND

THE causes for a divorce are adultery, impotency, any cause which by the laws of the State renders a marriage null and void, an abandonment for a period of three years, and illicit intercourse by the wife before the marriage, unknown to the husband at the time of the marriage.

A limited divorce may be granted for excessively vicious conduct, cruelty, abandonment, and desertion. If the cause occurred out of the State, the plaintiff or the defendant must have resided within the State for a period of two years prior to the beginning of the suit.

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A wife may sue for alimony, without a divorce. Marriages may be declared null for the causes of consanguinity and bigamy.

MASSACHUSETTS

A DIVORCE may be granted for adultery, impotency, extreme cruelty, cruel and abusive treatment, an utter desertion for a period of three consecutive years next prior to the filing of the bill, gross and confirmed habits of intoxication, a sentence to imprisonment at hard labor for a term of five years or more, notwithstanding any pardon if granted, and uniting with any religious society whose rules forbid marriage and continuing with such a society for a period of three years without the consent of the other party.

A divorce may also be granted on the libel of the wife when the husband, being of sufficient ability, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her. All decrees of divorce are *nisi* in the first instance, but they may become absolute at the expiration of six months on the application of either party if no reconciliation has taken place and if no cause is shown by any one why the absolute decree should not be granted. The parties must have lived together as man and wife within the State, or, if the cause occurred elsewhere,

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they must have lived together in the State previously, and one of them must have been a resident of the State at the time of the marriage, and the plaintiff must have lived within the State for a period of three years next prior to the action, unless it can be shown that he or she moved into the commonwealth for this purpose. Marriages may be declared null for the consanguinity or affinity of the parties, for nonage, insanity, idiocy, and for bigamy.

MICHIGAN

THE causes for an absolute divorce are adultery, impotency, desertion for a period of two years, habitual drunkenness, imprisonment for a term of three years, and a divorce obtained in another State by the other party.

A limited or an absolute divorce, in the discretion of the court, may be granted for extreme cruelty, whether from personal violence, desertion, or otherwise, also for desertion for a period of two years, and, to the wife, where the husband, being of sufficient ability, grossly or wantonly and cruelly refuses or neglects to provide a suitable maintenance for her.

A sentence to imprisonment for life absolutely and of itself dissolves a marriage without any decree of divorce. The plaintiff

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must have resided within the State for a period of one year next preceding the action, unless the marriage took place within the State and one of the parties had resided there ever since. If the cause for divorce occurred outside of the State, one of the parties must have resided within the State for a period of two years next prior to the action.

The court may in its discretion decree that the guilty party may not marry again for a stated time, not to exceed two years. Marriages may be declared null for nonage, if not ratified by the parties after they have obtained full legal age, and for consent obtained by force or fraud if never ratified voluntarily.

Marriages are void without a divorce if they are bigamous, or if the parties are within the prohibited degrees of relationship, or if performed during the insanity or idiocy of one of the parties. The decree of divorce can be granted unless the defendant is domiciled in the State or was at the time that the cause for divorce arose, or unless the defendant shall have been personally served with process in the State or with a copy of the order of publication in the cause, or has voluntarily appeared in the action. If the defendant did not live within the State at the time the plaintiff must prove that the parties have lived together as man and wife,

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or that the plaintiff has resided in the State for at least a period of one year, in good faith, next preceding the action.

MINNESOTA

THE causes for an absolute divorce are adultery, impotency, cruel and inhuman treatment, wilful desertion for a period of one year next preceding the filing of the bill, habitual drunkenness for a period of one year next preceding the action, and a sentence of imprisonment in a State prison. The plaintiff must have resided within the State for a period of one year, except in case of adultery committed while a resident of the State.

A limited divorce may be given to the wife for cruel and inhuman treatment, or such conduct on the part of the husband as may render it unsafe or improper for the wife to live with him, and for his abandonment of the wife and his refusal or neglect to provide for her. For such a cause both of the parties must be residents of the State, or the marriage must have taken place in the State, and the wife be an actual resident at the time of the complaint. If a divorce be sought for the adultery of the wife, her own real estate may be withheld from her.

Marriages between persons within the pro-

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hibited degrees of relationship and bigamous marriages are absolutely void. Marriages may be pronounced void by the court on account of the absence for a period of five years of one of the parties, or for lack of legal age, or when secured by force or fraud.

MISSISSIPPI

THE causes for a divorce are adultery, bigamy, impotency, habitual, cruel, and inhuman treatment accompanied by personal violence, wilful continuous and obstinate desertion for a period of two years, habitual drunkenness, a sentence of imprisonment in the penitentiary, the pregnancy of the wife at the time of the marriage unknown to the husband, insanity or idiocy at the time of the marriage, and the relationship of the parties within the degrees of consanguinity and affinity prohibited by law.

The plaintiff must have resided within the State for a period of one year before filing a bill for divorce. If the cause is desertion, a bona-fide residence for a period of two years is required. If in the case of a person being sentenced to serve a term of imprisonment in a penitentiary a pardon is secured before the person is sent to the penitentiary, there is no ground then for a divorce. In case the ground is adultery, the court may

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forbid the offender to marry again. Marriages are void because of consanguinity, and also if contracted between white persons and negroes of one fourth or more of negro blood.

MISSOURI

The causes for a divorce are adultery, bigamy, impotency, such cruel and barbarous treatment as endangers the life of the other, an absence without a reasonable cause for a period of one year, habitual drunkenness for a period of one year, such indignities as render the life of the other intolerable, a conviction of felony or other infamous crime after marriage, or before marriage if unknown to the other party, and the pregnancy of the wife at the time of the marriage unknown to the husband.

The plaintiff must have resided within the State for a period of one year next prior to the action, unless the offense or the injury complained of was committed within the State or while one or both of the parties resided within the State. If a husband unjustly deserts his wife and the wife does not wish to apply for a divorce, she may be granted a decree of the court providing her with a maintenance out of the husband's property, and also authorizing her to sell her real property without securing his signature,

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and "ordering any person holding money or other personal estate to which the husband is entitled in her right to pay and deliver the same to the wife."

Marriages are void for bigamy and for relationship within the prohibited degrees of consanguinity and between persons of the white and colored races.

MONTANA

THE causes for a divorce are adultery, extreme cruelty, wilful desertion, wilful neglect and habitual intemperance, each continued for a period of one year, and also conviction of a felony. The plaintiff must have resided in Montana for a period of one year, unless the offense was committed while one or the other of the parties resided within the State. Unless the parties to a divorce remarry each other, the innocent party cannot marry again within a period of two years, nor the guilty party before three years.

A poor woman may prosecute a suit for a divorce without costs. Although a decree of divorce may be denied, the court may award a maintenance to the wife and her children. Marriages may be annulled for bigamy, impotency, and for want of legal age if the marriage is not ratified after the obtaining of full age. Marriages may be annulled also

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for consent obtained by force or fraud, if not voluntarily ratified after the discovery of the fraud.

NEBRASKA

THE grounds for an absolute divorce are adultery, impotency, a wilful abandonment for a period of two years, habitual drunkenness, and imprisonment for a term of three years or for life.

An absolute or a limited divorce, in the discretion of the court, may be granted for extreme cruelty, desertion for a period of two years, or when the husband, being of sufficient ability to maintain his wife, grossly or wantonly and cruelly refuses or neglects to do so. The plaintiff must have resided within the State for a period of six months, except where the marriage was performed in the State and the plaintiff has resided within the State from that time until the time of the action. Neither party to an action for a divorce can marry before six months has expired, during which time the proceedings may be opened again. Marriages may be declared void for bigamy, nonage, insanity or idiocy at the time of the marriage, for consent obtained by force or fraud, for relationship within the prohibited degrees of consanguinity, and if between a white person and a negro of one fourth or more colored

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blood. If a decree of divorce is granted on the ground of the wife's adultery, "the husband may hold such of her personal estate as the court shall deem just and reasonable."

NEVADA

THE causes for a divorce are adultery, impotency, extreme cruelty, wilful desertion for a period of one year, habitual gross drunkenness contracted since the marriage and incapacitating the person from contributing to the support of the family, a conviction of a felony or infamous crime, and the neglect of the husband to provide the common necessaries of life for a period of one year, when such a neglect could be avoided by ordinary industry on the part of the husband and is not the result of his poverty.

The plaintiff must have resided within the State and the county for a period of six months, unless the action is brought in the county where the defendant resides or where the cause of action occurred.

Marriages are prohibited between white and colored people, mulattoes, Indians, and Chinese; they are void without any legal action on account of consanguinity and bigamy, and may be declared void for lack of age or understanding, if not subsequently ratified.

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NEW HAMPSHIRE

THE grounds for a divorce are adultery, impotency, extreme cruelty, treatment seriously injuring health, treatment endangering the reason, habitual drunkenness for a continuous period of three years, a conviction of a crime punishable in the State by imprisonment for more than one year and actual imprisonment under such a conviction, absence unheard from for a period of three years, the wilful absence of the husband for three years without making provision for his wife, the wilful absence of the wife from the State and an entire separation from the husband and without his consent for ten years, residence for three years in the State of a wife whose husband has left the United States intending to become a citizen of another country and during such a time has not furnished his wife with a support and has lived entirely separate from her, when either the husband or the wife, without sufficient cause and without the consent of the other, has abandoned and refused for a period of three years to cohabit with the other, and also joining any religious sect that forbids marriage to its members, and a refusal to cohabit for a period of six months.

Both of the parties to any action for a divorce must reside in the State, or the plain-

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tiff must reside there, and personal service must have been made on the defendant within the State, or one of the parties must reside within the State and one of them must have resided in the State one year next prior to the action.

NEW MEXICO

THE grounds for a divorce in this Territory are adultery, cruel and inhuman treatment, and abandonment. The plaintiff must have resided in the Territory for a period of six months next prior to beginning the suit. Marriages are void between persons within the prohibited degrees of relationship and for lack of age.

NEW YORK

THE single cause for an absolute divorce in this State is adultery. Both the man and the woman must have resided in the State when the offense was committed, or they must have been married in the State, or the plaintiff must have been resident in the State when the offense was committed and when the action is begun.

The plaintiff can marry again, but the defendant cannot marry within the State during the life of the plaintiff, except to the plaintiff, unless the court, after a period of five years, modifies the decree and allows the

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defendant to marry, which it may do if the plaintiff has in the meantime married again and the conduct of the defendant has been uniformly good. The defendant may remarry in another State, and if such a marriage is valid there it will be valid in the State of New York.

Bigamous marriages and those of persons within the prohibited degrees are void without legal process.

NEW JERSEY

THE causes for an absolute divorce are adultery, bigamy, impotency, wilful continued and obstinate desertion for a period of two years, and the marriage of persons within the prohibited degrees of relationship.

A limited divorce may be granted on the ground of extreme cruelty. One of the parties must have been an inhabitant of the State at the time the cause occurred, or the marriage must have taken place in the State and the plaintiff have been an actual resident both when the cause occurred and when bringing suit, or one of the parties must be an inhabitant of the State at the time of bringing the action, and one of them a resident during the period of two years in which the desertion was continued.

If the cause is adultery, and it was com-

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mitted in the State, one or both of the parties must have resided there at the time of bringing the action; if committed outside the State, one of the parties must have lived in the State for a period of three years preceding the beginning of the action. When impotency or bigamy exists at the time of the marriage, "all such marriages shall be invalid from the beginning and absolutely void." A poor person may sue without costs.

A limited divorce may be given for cruel and inhuman treatment, abandonment, conduct rendering it unsafe and improper to live with the defendant, or for a refusal or neglect on the part of the husband to provide for the wife. A marriage may be declared null for nonage, bigamy, impotency, idiocy, insanity, and for consent obtained by fraud or duress. An annulment of a marriage on the ground of impotency, which must be incurable, must be made within five years of the time of the marriage.

NORTH CAROLINA

The grounds for an absolute divorce are the separation of the husband from the wife and open living in adultery, the adultery of the wife either with or without a separation, impotency, the pregnancy of the wife at the

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time of the marriage unknown to the husband, and an indictment of the husband for a felony and his flight from the State and his non-return within one year.

The grounds for a limited divorce are abandonment, cruel or barbarous treatment endangering life, such indignities to the person of the other as render his or her condition intolerable and life burdensome, habitual drunkenness, and maliciously turning the other out of doors. The cause must have existed for at least six months, and the plaintiff must have resided in the State for a period of two years next preceding the filing of the bill.

A wife may give notice that she intends to sue for a divorce before the expiration of six months. Marriages may be declared void for consanguinity, affinity, bigamy, because between white persons and negroes or Indians, for lack of age, impotency, or mental incapacity at the time of the marriage.

NORTH DAKOTA

The causes for a divorce are adultery, extreme cruelty, wilful desertion or wilful neglect for a period of one year, habitual intemperance for one year, and a conviction of a felony.

The plaintiff must have been a resident in

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good faith in the State for a period of ninety days next preceding the commencement of the action.

A divorce can be denied if an unreasonable length of time has elapsed between the cause assigned and the beginning of the suit. Marriages may be annulled for bigamy, unsound mind, lack of age, force, fraud, or physical incapacity.

When a divorce is granted on the ground of adultery, the innocent party may marry again, but the guilty one can marry only the innocent party during the lifetime of that person.

OHIO

THE causes for divorce are adultery, bigamy, impotency, extreme cruelty, wilful absence for a period of three years, a sentence and an imprisonment in a penitentiary if the divorce is asked for during the imprisonment, a fraudulent contract, and a divorce procured in another State by the other party, the effect of which is to leave the defendant free and the plaintiff still bound. The plaintiff must have been a resident of the State for one year.

A wife may sue for alimony and the custody of her children without a divorce, in which case a residence for a year is not necessary.

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Marriages are prohibited between those who are nearer than second cousins and if bigamous.

OKLAHOMA

The causes for a divorce are adultery, bigamy, impotency, extreme cruelty, abandonment for a period of one year, habitual drunkenness, gross neglect of duty, conviction of a felony and imprisonment in a penitentiary subsequent to the marriage, a fraudulent contract of marriage, and the pregnancy of the wife unknown to the husband at the time of the marriage.

The plaintiff must have been an actual resident in good faith in the Territory for ninety days next preceding the filing of the bill, and a resident of the county in which the action is brought at the time the petition is filed. Neither party to a suit for divorce can remarry within six months, nor before thirty days after judgment is rendered by the final court of appeals.

A wife may sue for alimony alone if any cause exists that would entitle her to a divorce. If the parties appear to the court to be equally at fault, the court may refuse a divorce; but in any case where a divorce is refused the court may, for good cause shown, take such order as will be proper for the custody and maintenance of the children and the

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equitable division of the property. Marriages may be declared void for physical incapacity, bigamy, consent obtained by the use of force or fraud, and if within the prohibited degrees of relationship; also for a lack of age or understanding, if not ratified after such an incapacity ceases.

OREGON

THE grounds for a divorce are adultery, impotency, cruel and inhuman treatment or personal indignities that render life burdensome, a habit of gross drunkenness contracted after marriage and continued for a period of one year prior to the suit, a conviction of a felony, and wilful desertion for a period of one year.

The plaintiff must have resided in the State for one year. Marriages may be declared void because of bigamy, consanguinity, if either party to a marriage is incapable of assenting thereto either for want of legal age or because of insufficient understanding, if one party has a fourth or more of negro blood while the other is white, and if the consent has been obtained by the use of force or fraud and the contract of marriage has not been subsequently ratified. Marriages are void between first cousins of the whole or half blood.

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PENNSYLVANIA

THE causes for an absolute divorce are adultery, bigamy, impotency, wilful desertion without a reasonable cause for a period of two years, barbarous treatment by the husband endangering the life of the wife, or such indignities to her person as to render her condition intolerable and her life burdensome, thereby forcing her to withdraw from the house and family, a marriage on a false rumor of the death of the husband or wife within six months of the return of the same, or an action to establish the lunacy of a wife by a relation or best friend of the wife, marriage procured by force, fraud, or coercion and not subsequently confirmed, marriage within the prohibited degrees of consanguinity or affinity, cruel and barbarous treatment by the wife rendering the condition of the husband intolerable and his life burdensome, conviction of a forgery or any infamous crime within or without the State, and sentence to imprisonment for a term of two years, providing that the husband or the wife makes such an application for a divorce and that the crime is one that would be punished by imprisonment for a term of two years or more in Pennsylvania.

The plaintiff must have resided for a period of one year in the State. An application for

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a divorce may be made six months after desertion, although a decree of divorce cannot be granted until the desertion has continued for a period of two years. If a divorce is secured in another State and the defendant remains in the State of Pennsylvania, the divorce is not valid in this State.

A limited divorce may be secured for the causes of adultery, the abandonment of the wife by the husband for a period of two years, turning the wife out of doors, cruel treatment, and personal indignities.

A limited divorce may also be secured by a woman who has formerly lived in the State and has subsequently married elsewhere, and where the cause for divorce has since occurred in that other State or country, provided that notice is given to the husband either by a personal service or a registered letter to his last known address, and that the wife has lived within the State for a period of one year next prior to filing her bill.

An appeal from a decision granting a decree of divorce must be taken within one year.

The party found guilty of adultery cannot marry the corespondent during the lifetime of the other party. If any divorced woman, who shall have been found guilty of adultery, shall afterward openly cohabit with the person proved to have been the partaker

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of her crime, she is rendered incapable of alienating either directly or indirectly any of her lands, tenements, or hereditaments, and all wills, deeds, and other instruments of conveyance therefor are absolutely void, and after her death her property descends and is subject to distribution according to law in like manner as if she had died intestate. Marriages are declared void if the persons are within the prohibited degrees of consanguinity and if bigamous.

RHODE ISLAND

THE causes either for an absolute or a limited divorce are adultery, impotency, extreme cruelty, a wilful desertion for a period of five years—or for a shorter period, in the discretion of the court—living entirely apart for a period of ten years, continued drunkenness, the habitual, excessive, and intemperate use of opium, morphine, or chloral, a conviction for the crime of murder or arson by which the person convicted is deemed to be civilly dead, such an absence or other circumstance as raises the presumption of natural death, the neglect or refusal of the husband, being of sufficient ability, to provide necessaries for the wife, any gross misbehavior and wickedness repugnant to and in violation of the marriage contract, a mar-

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riage void or voidable at law from the time of its celebration.

A limited divorce may be given for such other causes as may seem to require the same. A residence in the State for a period of one year next prior to the filing of the bill is necessary. Marriages are void for consanguinity, bigamy, idiocy, and lunacy.

SOUTH CAROLINA

THE State of South Carolina does not grant a divorce. Marriages are void between persons of the white and colored races, for consanguinity, idiocy, lunacy, want of consent if the contract is not subsequently ratified, and for bigamy, unless the person has been absent unheard from for a period of seven years.

SOUTH DAKOTA

THE causes for a divorce are adultery, extreme cruelty, wilful desertion or wilful neglect for a period of one year, habitual intemperance for a period of one year, and a conviction of felony. The plaintiff must have been a resident of the State in good faith for a period of ninety days next preceding the beginning of the suit. Marriages may be annulled for bigamy, unsound mind, lack of age, force, fraud, or physical inca-

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pacity. If a divorce is granted for the cause of adultery, the guilty one cannot marry any one except the other while the other lives.

TENNESSEE

THE causes for an absolute divorce are adultery, bigamy, impotency, a wilful or a malicious desertion without a reasonable cause for a period of two years, a conviction of an infamous crime or felony, with sentence of confinement in a penitentiary, an attempt by one on the life of the other by poison or other means showing malice, the refusal of the wife to remove with her husband to this State without a reasonable cause and wilfully absenting herself from him for a period of two years, habitual drunkenness contracted after marriage, and the pregnancy of the wife at the time of the marriage unknown to the husband.

A limited or an absolute divorce, in the discretion of the court, may be granted to the wife for such cruel and inhuman treatment toward her as renders it unsafe and improper for her to remain under the dominion and control of her husband, or such indignities to her person as render her condition intolerable, thereby forcing her to leave him, or abandoning or turning her out of doors and refusing or neglecting to provide for her.

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The plaintiff must have resided in the State for a period of two years next prior to the suit. Marriages are void for consanguinity, also when between white and colored persons, or if either party was incapable of consenting to the contract for lack of age or mental incapacity, or if consent to the marriage was obtained by force or fraud, or if it was a bigamous marriage.

A second marriage is not bigamous if the former husband or wife has been absent for a period of five years and not known to the other to be living. If a divorce is granted on the ground of a wife's adultery, she cannot alienate her lands if she lives openly with her accomplice, and at her death they descend as if she died intestate.

TEXAS

THERE are causes for divorce in favor of the husband if the wife commits adultery, or if she has voluntarily left him for a period of three years with an intention of abandonment. There are causes for divorce in favor of the wife when the husband has abandoned her and lived in adultery with another, or if he leaves her for a period of three years, with intent to abandon.

A divorce in favor of either party may be granted for such excesses, cruel treatment,

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or outrages as render living together insupportable, a conviction of a felony after marriage, except when the conviction was obtained on the testimony of the plaintiff and unless a pardon was secured within twelve months of the date of the conviction. The plaintiff must be an actual resident of the State, and for six months a resident of the county where the suit is brought.

The court cannot compel either party to a suit for divorce to transfer real estate to the other party. Marriages are null because of impotency at the time of the marriage, or because of any other impediment that renders the contract of marriage void, and also if between white persons and negroes.

UTAH

THE causes for a divorce are adultery, impotency, extreme cruelty, a wilful desertion for a longer period than one year, habitual drunkenness, a conviction of a felony, and a wilful neglect to provide the wife with the common necessaries of life. An actual residence for a period of one year in the State and county is required.

Marriages are void for consanguinity, bigamy, idiocy, lunacy, lack of age, or if between a person of the white race and a negro or Mongolian. The court may declare a mar-

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riage void if obtained by force or fraud and the man was under sixteen years of age and the woman under fourteen years, the parents' consent not being secured and the marriage not being ratified after the legal ages have been attained.

VERMONT

THE causes for a divorce are adultery, intolerable severity, confinement at hard labor in State prison for a term of three years or more, or for life, when actually so confined at the time of an action for a divorce, a wilful desertion for three consecutive years, absence unheard from for a period of seven years, and gross and wanton and cruel neglect or refusal to provide suitable maintenance for the wife, the husband having sufficient pecuniary or physical ability to make such a provision.

The parties must have lived together in the State, and the plaintiff must have resided within the State for one full year next prior to bringing suit. No divorce will be granted for a cause which occurred in another State or country before the parties lived together in the State of Vermont as husband and wife, and while neither party was a resident of the State, unless the libellant shall have resided in the State at least one year and in the county when the libel is preferred for at least three months.

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The defendant to a suit for a divorce cannot marry again until three years have elapsed after a divorce is granted, if the plaintiff is still living, unless he or she remarries the plaintiff, without making herself or himself liable to imprisonment at hard labor in a State prison for a term of from one to five years.

Marriages may be annulled for bigamy, impotency, consanguinity, nonage, idiocy, lunacy, and for consent obtained by the use of force or fraud.

VIRGINIA

The grounds for an absolute divorce are adultery, impotency, a sentence to the penitentiary, without regard to a subsequent pardon, a conviction of either party of an infamous offense before marriage unknown to the other, when either is charged with an offense punishable with death or imprisonment and is a fugitive from justice and has been absent for a period of two years, or if the wife has been a prostitute or was pregnant before marriage unknown to the husband, provided that in these last two cases and in that of a conviction of an infamous offense the injured party leaves the other immediately upon discovery of the facts.

A limited divorce may be granted for cru-

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elty, a reasonable apprehension of bodily hurt, and abandonment.

One of the parties must have lived in the State for at least one year prior to the action, and one must be domiciled in the State at the time of bringing suit. Marriages may be annulled for bigamy, impotency, consanguinity or affinity, lack of age, insanity at the time of the marriage, and if between persons of the white and colored races. The court in its discretion may prohibit a party guilty of adultery from marrying again. The court may follow a decree of limited divorce by one of absolute divorce when the desertion has existed for a period of three years and there is no probability of reconciliation.

WASHINGTON

The grounds for a divorce are adultery, impotency, cruel treatment of either by the other, or personal indignities rendering life burdensome, abandonment for a period of one year, the habitual drunkenness of either party, or the neglect or refusal of the husband to make suitable provision for his family, the imprisonment of either party in a penitentiary if the complaint is filed during the term of such imprisonment, when the consent to the marriage was obtained by force or fraud and the marriage was not voluntarily

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ratified afterward, or if an incurable chronic mania or dementia has existed for a period of ten years or more the court in its discretion may grant a divorce, and a divorce may also be granted upon the application of either party for any other cause deemed by the court sufficient, and the court is satisfied that the parties can no longer live together. On the ground of adultery application for a divorce must be made within one year of knowledge of the offense. The plaintiff must have lived in the State for one year.

A new marriage cannot be contracted until six months after the decree of divorce is granted, or, if an appeal is taken, until judgment is rendered upon the appeal. If a marriage is contracted either within or without the State in violation of these provisions, it is void. When there is any doubt as to the facts rendering a marriage void, either party may apply for, and upon proof shown obtain, a decree of nullity.

Marriages that would be bigamous or between persons within the forbidden degrees of relationship are prohibited.

WEST VIRGINIA

THE grounds for an absolute divorce are adultery, impotency, a wilful abandonment for a period of three years, a sentence to

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UNIV. OF CALIFORNIA

confinement in a penitentiary, a conviction of an infamous offense before marriage unknown to the other party, the pregnancy of the wife at the time of the marriage without the husband's agency or knowledge, when the wife prior to the marriage has been notoriously a prostitute unknown to the husband, or where the husband, unknown to the wife, has been a notoriously licentious person.

A limited divorce may be granted for cruel or inhuman treatment, a reasonable apprehension of bodily hurt, desertion, and the habit of drunkenness formed since marriage. In a case where a limited divorce has been granted and a period of two years has elapsed since the beginning of the suit without a reconciliation being effected, the court, upon the application of the injured party and satisfactory evidence submitted, may decree an absolute divorce from the bonds of matrimony, if in the opinion of the court no reconciliation is probable.

One of the parties to an action for a divorce must have been a resident of the State for at least one year, and the action must be brought in the county where the parties last lived or in the county where one of the parties resides.

Adultery cannot be made a ground for a divorce unless action is taken within five years of the time the offense was committed.

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Marriages performed within the State may be annulled for consanguinity or affinity, bigamy, impotency, insanity, nonage, or miscegenation.

WISCONSIN

THE grounds for an absolute divorce are adultery, impotency, cruel and inhuman treatment, wilful desertion for a period of one year next preceding the bringing of the suit, a voluntary separation for a period of five years, habitual drunkenness for one year next preceding the bringing of the suit, when a wife is given to intoxication, and also a sentence to imprisonment for a term of three years or more.

A limited divorce may be granted for a wilful desertion for a period of one year, or habitual drunkenness for the same length of time, when the wife is given to intoxication, cruel and inhuman treatment, extreme cruelty, refusal or neglect on the part of the husband, being of sufficient ability, to provide for his wife, such conduct on the part of the husband toward the wife as may render it unsafe or improper for her to live with him.

The plaintiff must have resided within the State for one year immediately before bringing the suit, unless the ground is adultery committed while the plaintiff resided in the State, or unless the marriage was performed

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in the State and the plaintiff has resided there from that time until the action is brought by the wife, and the husband shall have resided in the State for one year next preceding the commencement of the action.

Marriages of persons who are within the prohibited degrees of consanguinity, and also bigamous marriages, if solemnized in the State, are absolutely void without any legal action. A decree of nullity may be secured for lack of age or mental capacity, also when a marriage was obtained by force or fraud and has not been voluntarily ratified, and when either party to a marriage is imprisoned on a life sentence.

WYOMING

The grounds for a divorce are adultery, impotency, extreme cruelty, a wilful desertion for a period of one year, habitual drunkenness, a conviction of felony and sentence to imprisonment after marriage, a conviction of felony before marriage unknown to the other party, the neglect of the husband for a period of one year to provide his wife with the common necessaries of life, he being able to do so by ordinary industry, intolerable indignities, the vagrancy of the husband, and the pregnancy of the wife at the time of the marriage unknown to the husband and without

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his agency. The plaintiff must have resided six months in the State, unless the marriage was performed in the State and the plaintiff has resided there from that time until bringing suit.

A marriage is void without a decree of nullity on account of bigamy, consanguinity, or mental incapacity at the time of its celebration. A marriage may be decreed void for lack of age if the parties separate before arriving at the legal age and do not live together afterward, also if the marriage was obtained by the use of force or fraud and has not been voluntarily ratified. Adultery will not serve as a ground for a divorce unless the suit is begun within three years of the discovery of the offense.

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LIMITED DIVORCE

OUR policy in legislation with reference to domestic relations allows of a limited divorce which effects the separation of the parties to a marriage without, however, acknowledging a right of remarriage to either party during the lifetime of the other party.

Limited divorce is allowed in the following States: Alabama, Arkansas, Delaware, Georgia, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Nebraska, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Tennessee, Virginia, West Virginia, Wisconsin, and also in the District of Columbia. It is to be noted, however, that in the States of Minnesota, Pennsylvania, and Tennessee this right to a limited divorce exists in favor of the wife only. The list of causes for which a limited divorce may be secured is very nearly as long as the list of causes for absolute divorce.

Adultery is a cause in the States of Alabama, Arkansas, Kentucky, Louisiana, Pennsylvania, and Rhode Island. The pregnancy of the wife at the time of the marriage and unknown to the husband is cause in the

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States of Alabama and Kentucky. The lewd and lascivious behavior of the wife is cause also in Kentucky. Gross misbehavior and wickedness in violation of the marriage covenant is a cause in the State of Rhode Island. Crime against nature is a cause in the State of Alabama. The concealment of a loathsome disease existing at the time of the marriage is a cause in the State of Kentucky. Excessively vicious conduct is a cause in the State of Maryland. Impotency or physical incapacity at the time of the marriage is a cause in the States of Alabama, Arkansas, Kentucky, and Rhode Island.

Abandonment, desertion, or wilful absence are causes for a limited divorce in the States of Alabama, Arkansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota (coupled with refusal or neglect to provide for the wife), Nebraska, New York, North Carolina, Pennsylvania, Rhode Island, Tennessee, Virginia, West Virginia, and Wisconsin.

Disappearance—that is, such an absence as will cause the presumption of death—is a cause also in the State of Rhode Island; living apart or voluntary separation is a cause in the State of Kentucky, where also there is a cause when either the man or the woman has joined a religious sect in which it is a tenet of faith that marriage is unlawful.

Cruelty, actual violence, or an apprehen-

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sion thereof, inhuman treatment, etc., is a cause in the States of Alabama, Arkansas, Georgia, Kentucky (in favor of the wife only), Louisiana, Maryland, Michigan, Minnesota, Nebraska, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Tennessee, Virginia, West Virginia, and Wisconsin.

Indignities rendering the condition of marriage intolerable or life in general burdensome is a cause in Arkansas, North Carolina, Pennsylvania, and Tennessee; in the last State, however, this cause must be coupled with the husband's refusal or neglect to provide for the wife. Conduct rendering it unsafe or improper for the parties to a marriage to live together is a cause in the States of Minnesota, New York, Tennessee, and Wisconsin, where, however, it is a cause to the wife only. The failure or neglect of the husband to provide for the wife is a cause in the States of Delaware, Michigan, Minnesota (coupled with an abandonment of the wife), Rhode Island, and Wisconsin.

Drunkenness, intemperance, or intoxication, when it is habitual, is a cause in the States of Alabama, Arkansas, Georgia, Kentucky, Louisiana, North Carolina, Rhode Island, West Virginia, and Wisconsin. The State of Wisconsin has also a cause to the husband when the wife is given to intoxication.

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A conviction for a felony or an infamous crime and imprisonment is a cause in the States of Alabama, Arkansas, Kentucky, Louisiana, and Rhode Island. An insanity that is permanent and incurable occurring subsequent to the marriage is a cause in the State of Arkansas, in which State, also, there is a cause when either party had a former husband or wife living.

In the State of Rhode Island a limited divorce may be secured for any cause rendering the marriage originally void or voidable. The procurement of the marriage by means of force or fraud is a cause in the State of Kentucky. The procurement of the marriage when either party was under the age of consent is a cause in the State of Delaware.

An attempt by either the man or the woman upon the life of the other is a cause in the State of Louisiana, where, also, public defamation is regarded as a cause.

The State of Georgia still preserves the historic causes on any ground which was held sufficient in the English courts prior to the fourth day of May, 1784.

The States of Rhode Island and Kentucky vest a large discretion in the court, allowing in Kentucky "such other cause as the court may deem sufficient," and in Rhode Island "such other causes as may seem to require the same."

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DIVORCES AMONG THE MORMONS

THERE are two kinds of divorce recognized among the Latter-Day Saints or Mormons, one separating the man and the woman for the period of this life, and the other for the future life also. In cases where divorces *a mensa et thoro* are sought from first wives or from legal husbands, the ordinary civil courts of the State are used. Where, however, plural wives are the suitors, either as plaintiffs or defendants, inasmuch as they cannot appeal to the civil courts, having no legal status therein, resource is had by an appeal to the power which bound them to set them free. The President of the Church of Jesus Christ of Latter-Day Saints, being invested with the supreme authority to bind in marriage, can also unloose.

The decree of divorce granted to its members by the Mormon Church is an outgrowth of the doctrine of plural and of eternal marriage, without which a plural wife would be without a remedy for a condition that might become intolerable. As the jurisdiction of the civil courts extends to this world only, the relief afforded by such a court in the

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event of an ill-assorted spiritual marriage would be very inadequate, as a decree of divorce granted by such a court would, according to the belief of the Latter-Day Saints, leave the marriage still in force for the future life. So men and women who have been sealed to each other for eternity, and have been divorced by a decree of a civil court, must, if they desire to live separate from each other in the world to come, have their eternal covenant subsequently unsealed by ecclesiastical authority. The practical bearing of these church divorces on the lives of Mormon women is therefore apparent. When men and women spiritually married have been divorced by the civil courts or by the church for this world only, they are free to marry, but only for this world; when, however, they are divorced by the church for eternity as well, they are wholly freed from each other. The causes for which a man may obtain a church divorce from his wife, either for time or eternity, or for both, are murder, adultery, infanticide, feticide—a crime that is considered even more heinous than the violation of marriage vows—and incompatibility of temper rendering it impossible to live together harmoniously. A woman may be divorced from her husband for any of these causes, and, in addition, for impotency existing at the time of the marriage or contracted

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subsequent thereto, cruel treatment, refusal or neglect to support her and her children, or injuries of any kind repeated until her love is turned to loathing. The Mormon Church has further provided that should a proof of crime come to light after the death of one of the parties to a sealed marriage, the survivor may procure a church divorce.

The ecclesiastical divorces can be granted only by the president of the church. This official grants divorces upon the application of one or both of the parties interested and the recommendation of the bishop of the ward where they reside. It is the duty of the bishop to investigate the case thoroughly, and to make every effort to bring about a settlement of the difficulties.

It is always necessary, of course, for a first wife of a Mormon to be divorced by the civil courts, if at all; but, according to the law of the church, permission from a religious teacher must be obtained before a suit is begun, no matter whether the husband or the wife is the plaintiff. If a woman thinks that she is not fairly treated in the settlement of property affairs, she may complain to the teacher of the ward where she lives, and if the teacher thinks that her complaint is well founded he lays the question before the bishop who, with his counselors, tries the case. Should this court find in favor of the

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woman, it revises the property settlements made in the civil court. The defeated party has a right of appeal to the high council of the church and afterward to the president of the church, but if he or she loses the case on the final appeal excommunication will follow any further resistance.

The decrees of divorce granted by the church are in the form of a covenant between the parties, and read as follows:

Know all Persons by these presents:

That we the undersigned, and his wife (before her marriage to him), do hereby mutually covenant, promise, and agree to dissolve all the relations which have hitherto existed between us as husband and wife, and to keep ourselves separate and apart from each other from this time forth.

(Acknowledged.)

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ALIMONY

ALIMONY is the allowance which a husband pays, by an order of court, to his wife for her maintenance while living apart from her, or it is a provision that is ordered for the maintenance of a woman who is divorced from the bond of matrimony out of the estate of the man who was her husband. Where alimony is granted in connection with a decree of divorce, the court which has jurisdiction to decree the divorce has also the power to grant alimony, provided that it has obtained jurisdiction of both the parties to the suit; but if the defendant is domiciled in another State and does not appear, no alimony can be granted unless he has been sued with process within the jurisdiction of the court or appears and defends. When a wife has obtained a decree of divorce in one State, with which no alimony was granted, she has, in some cases, been permitted to obtain from the court having jurisdiction at the domicile of the husband a decree allowing alimony. If after alimony has been decreed by the court the husband moves to another jurisdiction, the decree can

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be enforced by the courts of the latter jurisdiction or by the United States courts. A legislature, in granting a divorce, cannot give alimony, but the jurisdiction to do so has been given by statutes or assumed by the courts in a large number of the States. In those States in which jurisdiction is given to the courts to decree this maintenance the statute which grants the power as a rule defines the circumstances under which the court may grant it. But in those States in which the courts have assumed the jurisdiction as one of their equitable powers the circumstances that are regarded as necessary to entitle a woman to receive alimony are not clearly defined. Desertion, leaving the wife without means of support, is very generally recognized as a sufficient cause.

Where alimony is decreed to a wife during the pendency of a suit for a divorce, it is called *alimony pendente lite*. This form of alimony is also regulated by statute in most of the States at the present time. The mere pendency of the suit where the wife has no separate means sufficient for her support entitles her, whether she is plaintiff or defendant, to alimony so long as the litigation continues. This form of alimony is usually made up of a sum to support the wife and to pay her counsel fees and the other expenses of the suit, and this the court will allow, upon

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having the necessary facts presented to it, almost as a matter of course. The amount is determined by no fixed rule, being in the discretion of the court in view of the circumstances of each case. Within the jurisdiction in which the decree of alimony was granted, the court which granted it is the proper court to enforce it, yet if the parties reside in different States it may be enforced by the United States courts.

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CHANGE OF NAME AFTER DIVORCE

IN the States and District named below the court may change the name of any woman to whom a divorce is granted: Arizona, Arkansas, Connecticut, Georgia (by the jury), Illinois, Kansas, Kentucky, Massachusetts, Minnesota, Missouri, Nevada, Ohio, Oregon, Rhode Island, Texas, Vermont, and Washington, and the District of Columbia.

In Arizona, the District of Columbia, Oregon, Texas, and Washington the name of the woman may be changed whether the divorce is granted on the application of the wife or not. In Arizona and Texas the court, upon a final disposition of the case, may make a decree changing the name of either party, if such a change is specially prayed for. In Vermont the court may change the names of the minor children of divorced parents when such a change is prayed for in the petition for divorce.

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UNIFORM DIVORCE LAW

FOR the many social evils that arise because of the very great diversity of the divorce laws of the several States many remedies have been suggested, and among the most practical of these suggestions is one for the adoption by as many as possible of the States of a uniform divorce law.

The National Commissioners on Uniform Laws, a body in which many if not all of the States are represented, have prepared a general law upon the subject of divorce which every State in the Union will be asked to adopt. As very possibly law in the near future this suggested statute is worthy of note in the study of the legal status of American women. The proposed law is as follows:

SECTION 1. No divorce shall be granted for any cause arising prior to the residence of the petitioner or defendant in this State which was not a ground for divorce in the State in which the cause arose.

SEC. 2. No person shall be entitled to a divorce for any cause arising in this State who has not had actual residence in this State for at least one year next before bringing suit for divorce, with

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a bona-fide intention of making this State his or her permanent home.

SEC. 3. No person shall be entitled to a divorce for any cause arising out of this State unless the petitioner or defendant shall have resided within this State for at least two years next before bringing suit for divorce, with a bona-fide intention of making this State his or her permanent home.

SEC. 4. No person shall be entitled to a divorce unless the defendant shall have been personally served with process if within this State, or with personal notice, duly authenticated, if out of this State, or unless the defendant shall have entered an appearance in the case; but if it shall appear to the satisfaction of the court that the petitioner does not know the address nor the residence of the defendant, and has not been able to ascertain either after reasonable and due inquiry and search continued for one year, the court, or judge in vacation, may authorize notice by publication of the pendency of the petition for divorce, to be given in the manner provided by law.

SEC. 5. No divorce shall be granted solely upon default, nor solely upon admissions by the pleadings, nor except upon trial before the court in open session.

SEC. 6. After divorce either party may marry again, but in cases where notice has been given by publication only, and the defendant has not appeared, no decree for divorce shall become final or operative until six months after trial and decision.

SEC. 7. Wherever the word "divorce" occurs in this act it shall be deemed to mean divorce from the bond of marriage.

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Divorce from the bond of marriage shall be granted for the following causes arising after marriage: Adultery, extreme cruelty, habitual drunkenness or the confirmed habit of intoxication, whether arising from the use of alcoholic drinks or drugs, conviction of felony with sentence to State prison or penitentiary, and continuous desertion for at least — years; divorce from the bond of marriage shall not be granted for any other cause arising after marriage.

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Part II

PROPERTY RELATIONS

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MARRIAGE SETTLEMENTS

A MARRIAGE settlement is an agreement made by the parties in contemplation of marriage, by which the title to certain property is vested and the property to some extent becomes inalienable. In most of the States a man and a woman may by a marriage contract made before marriage stipulate what rights each shall have in the estate of the other during marriage and after its dissolution by death, and bar each other of all rights not so secured. No agreement made before marriage can, of course, destroy the personal rights and liabilities of the status of husband and wife. So, although before his marriage a husband may agree to live in a certain place, he can after marriage, in the exercise of his marriage rights, decide without regard to his agreement upon another place of residence for himself and his wife. In no case can a husband and wife enter into any agreement to alter the legal orders of descent, either with respect to themselves or in what concerns the inheritance of their children or posterity which either may have by any other person, or in respect to

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their common children. Nor can they make a valid agreement to impair the legal rights of the husband over the person of the wife or the persons of their common children.

But a man and a woman who are about to become husband and wife can, by contract, settle the precise rights they shall respectively have in their own and each other's property during their married life. So, also, third persons may settle property on them, in consideration of their marriage, which they will hold when married, subject to the terms of the contract they have made and not according to the ordinary laws of the marriage estate.

A marriage settlement must in all States be in writing, and in the States of Maine, Georgia, Texas, and Louisiana it must have at least two witnesses. It need not contain technical words, and it need only appear that there is an enforceable promise in regard to marriage rights to or over property or in consideration of marriage, but it is subject to the operation of all the general laws as to the recording of instruments affecting rights in real estate or in personal property.

The capacity of the parties, with certain exceptions as to age, is that required for the execution of any other contract. In Massachusetts female minors of the age of eighteen years may join with their guardians in mak-

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ing a marriage contract. So in Texas, Idaho, Louisiana, and Arizona any minor legally capable of marrying may join in such a contract with the written consent of both parents or the guardian, while in the States of California, Nevada, and Georgia any minor capable of contracting marriage may make a valid marriage contract or settlement.

Any fraud or concealment by one party as to the value of his or her property will in all the States render a marriage settlement relating thereto voidable. In this connection it has been well said that persons about to marry "do not, like buyer and seller, deal at arm's length, but stand in a confidential relation requiring the exercise of the greatest good faith."

The law of the State of Louisiana provides also for marriage settlements or contracts in contemplation of marriage. Married persons can by contract make to each other reciprocally, or the one to the other, what donations they may think proper, under certain conditions. A donation of property in future or of property present and in future made between married persons by contract is not transmissive to the children, the issue of the marriage, in case of the death of the donee before the donor. Either of the married couple may, either by a marriage contract or during the marriage, give to the other in full

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property all that he or she might give to a stranger. A minor, if not emancipated, can give only with the consent of the relations whose consent is requisite for the validity of the marriage, but with that consent he or she can give all that the law permits a married person of full age to give to his or her consort. If the relations whose consent is necessary be dead, then the authorization of a court of justice is required. All donations made between married persons during marriage may be revoked. Such a revocation may be made by the wife without her being authorized to that effect by her husband or by a court of justice. Such donations are not revoked by the birth of children, provided that they do not exceed the amount which married persons are permitted to dispose of to each other, to the prejudice of their children or their legitimate descendants.

A man or a woman who contracts a second or a subsequent marriage, having children by a former marriage, can give to his wife, or she to her husband, only the least child's portion, and that only as a usufruct—that is, the right of enjoying the profit without impairing the substance—and in no case can the portion of which the donee is to have the usufruct exceed a fifth part of the donor's estate. If a person who marries a second time has children of his or her preceding

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marriage, he or she cannot dispose of the property given to him or her by the deceased spouse, or which came to him or her from a brother or sister of any of the children which remain. This property becomes by the second marriage the property of the children of the preceding marriage, and the spouse who marries again has only the usufruct of it. All donations disguised in any way or made to persons interposed shall be null and void.

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DOWER

IN the general acceptance of the word, "dower" means a certain estate of a wife in the real property of her husband. The law entitling a wife to an estate of dower in the lands of her husband had for its object a sure and competent sustenance for the widow, and to further this object of the law the courts have always highly favored a widow's claims for dower, for, as the great Lord Coke says, "There be three things highly favored in law—life, liberty, and dower."

At an early period in the development of the common law, dower is said to have consisted of personal property, but later it became solely an interest in lands, and is now understood in connection with that form of property exclusively. A more complete definition of dower is that it is a life estate of a wife in one third of all the legal estates of inheritance of which her husband is seized at any time during coverture, "of a sole, beneficial, and immediate seizing," and which any issue of theirs might directly inherit. Under the statutes of the American

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States, dower has become more or less different from the estate that was known by that name at the common law, and in some of the States dower is the old common-law estate only in name, and in some States even the name has been done away with.

The common-law estate of dower is recognized in a more or less modified form in the following States: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. This estate has either never existed or has been abolished or other estates have been substituted for it in the following States: Arizona, California, Colorado, the Dakotas, Idaho, Indiana, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Nevada, Utah, Washington, and Wyoming. In the States of Kentucky, Missouri, Virginia, and West Virginia a wife has dower in real estate although there may have been no actual possession or recovery of possession by the husband in his lifetime, and also in the State of Missouri, although the property is held by the husband as a joint tenant, common tenant, or coparcener. In the State of Ohio a wife is also

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endowed of all real estate of which her husband at his decease held the fee in remainder or reversion, but not until after the particular estate has determined. In some of the States there is a general provision that a widow is entitled to dower in equitable estates, as in Indiana, Illinois, Maryland, Virginia, West Virginia, North Carolina, Tennessee, and Alabama.

At the common law, and where there is no special enactment to the contrary, a widow is entitled to dower in the whole of land mortgaged or encumbered by the husband after marriage by a conveyance in which the wife has not joined and when she has not been otherwise barred. There is special provision in a number of States that if lands were purchased by the husband during marriage, and at the same time mortgaged to secure the purchase money, the widow has dower only in the equity even if she did not join in the mortgage, as in the States of New York, Indiana, Illinois, Michigan, Wisconsin, Nebraska, West Virginia, Oregon, and Georgia. In the case of lands mortgaged before marriage, it is evident that the widow has dower, if at all, only in the equity of redemption, and the mortgagee has a good title. In some States there is a special provision to this effect, and the widow has dower as against every person but the mortgagee, as in the

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States of Massachusetts, Maine, Vermont, New York, Illinois, Michigan, Wisconsin, Nebraska, Virginia, West Virginia, Arkansas, and Oregon. In the States of New York, Illinois, and Arkansas it is provided that a widow is not endowed of lands mortgaged to her husband unless he acquires an absolute estate therein during marriage. As to lands mortgaged by the husband before marriage or after marriage to secure the purchase money, the widow, if the lands are sold by the mortgagee, has dower in the proceeds remaining after satisfying the mortgage in the States of Massachusetts, Maine, Vermont, New York, Illinois, Michigan, Wisconsin, Nebraska, Virginia, West Virginia, Kentucky, Arkansas, and Oregon. It is provided in the States of Massachusetts, Maine, Vermont, Michigan, Wisconsin, Nebraska, and Oregon that if the heir or other person claiming under the husband pay or satisfy the mortgage, this amount so paid shall be deducted from the value of the land, and the widow shall have set apart for her as dower the value of one third of the residue. In New Jersey it is specially provided that there shall be no dower for the widow of a trustee in the trust estate.

In several of the States, if a husband exchanges one estate for another during marriage the widow cannot have dower in both

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estates, and shall be deemed to take dower in the lands so received in exchange if she does not commence proceedings to recover dower in the lands given within one year of the death of her husband, and so it is in the States of New York, Illinois, Michigan, Wisconsin, Nebraska, Arkansas, and Oregon. In the New England States a widow is not generally entitled to dower in wild land, nor in wild land conveyed by the husband and afterward cleared, except wood lots or other land used with a farm or dwelling-house.

The rights of a doweress are, as a rule, well defined in the statutes. Generally, if a doweress commits waste herself or suffers waste to be committed by another she is liable to the owner of the next estate of inheritance for damages. And it would seem to follow from the mere prohibition of permissive waste that the doweress, in all the States, must keep the estate in sufficient repair, and in the States of New Hampshire, Vermont, Rhode Island, Connecticut, Illinois, Michigan, Wisconsin, Nebraska, and Oregon it is so expressed specifically.

In the United States three ways by which dower may be barred are very generally recognized: first, by a jointure or settlement; second, by a devise or bequest; and third, by a deed. An estate of dower may also be forfeited by adultery and divorce. In most

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of the States at the present time dower may be barred by a conveyance, gift, or devise of real property made by any person to, or in trust for, an intended wife, before marriage, by way of jointure or with the intention of barring dower. This may be done in the States of Maine, New Hampshire, Massachusetts, Vermont, Rhode Island, Connecticut, New York, New Jersey, Ohio, Indiana, Illinois, Michigan, Wisconsin, Nebraska, Delaware, Virginia, West Virginia, Kentucky, Missouri, Arkansas, Oregon, South Carolina, and Georgia. In the State of Maryland a widow is barred from dower only by an estate so settled before her marriage by her husband.

There are certain conditions upon which such a substitute for dower can be made. The conveyance must in several States be made with the assent of the intended wife, and so it is in the States of Massachusetts, Maine, New York, Indiana, Illinois, Michigan, Wisconsin, Nebraska, Delaware, Virginia, West Virginia, Kentucky, Missouri, Nebraska, Oregon, and Georgia. In Vermont there is an express provision that such a conveyance will bar a claim to dower whether the intended wife has consented to it or not. In some of the States her assent must be evidenced by her becoming a party to such a conveyance, as in Maine, Massa-

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chusetts, New York, Illinois, Michigan, Wisconsin, Nebraska, Arkansas, and Oregon. If the intended wife be under age, her father or other guardian may give such assent for her in New York and Indiana; or she must join with her father or guardian in the conveyance in the States of Maine, Massachusetts, Illinois, Michigan, Wisconsin, Nebraska, Arkansas, and Oregon. In a number of States if such a conveyance is made without her consent she may make a choice of the estate so conveyed or of dower, but she is not entitled to both, and this is the rule in the States of Maine, Massachusetts, Vermont, New York, Indiana, Illinois, Michigan, Wisconsin, Nebraska, Virginia, West Virginia, Kentucky, Arkansas, and Oregon. The woman's interest in such a conveyance, in order to bar dower, must take effect immediately upon the death of her husband in the States of Massachusetts, Maine, Vermont, Rhode Island, Connecticut, New Jersey, Ohio, Indiana, Michigan, Wisconsin, Nebraska, Delaware, Missouri, and Oregon.

In very many of the States a widow's dower may be barred in the same way by a pecuniary provision settled on or made to the intended wife before marriage in lieu of dower, and the widow must exercise an election. But a widow is entitled to dower in addition to the devises or pecuniary provi-

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sions in a will if such plainly appear to have been the intention of the testator in Maine, Massachusetts, Vermont, Connecticut, Indiana, Michigan, Wisconsin, Nebraska, Virginia, Kentucky, Missouri, Arkansas, and Oregon. Generally, the intestate share of a widow in personalty is barred if she does not waive the will, just as dower would be. The State of Maryland is an exception in this respect, for a devise of lands to the widow is construed to be in addition to any jointure or settlement made before marriage by the husband, and she is entitled to receive both.

A woman may generally bar her right to claim dower by a deed that she may execute, either jointly with her husband, as in the States of Maine, Massachusetts, Indiana, Illinois, Michigan, Kansas, Nebraska, North Carolina, Missouri, Arkansas, Oregon, Georgia, Alabama, and Florida; or separately in Maine, Massachusetts, New Jersey, Michigan, Nebraska, Oregon, Alabama, and Florida; or jointly after the conveyance by the husband in Maine, Massachusetts, and Nebraska; or by a deed executed like ordinary deeds of a wife's separate real estate in Rhode Island and New Jersey.

In many of the States a wife who willingly leaves her husband and dwells with another man in adultery forfeits her right to dower,

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and this is the rule in New Jersey, Ohio, Indiana, Illinois, Delaware, Virginia, West Virginia, North Carolina, Kentucky, Missouri, and South Carolina. In Georgia this provision is expressed, that dower is barred by adultery of the wife that is unpardoned by the husband. In Connecticut a wife forfeits her right to dower who has abandoned her husband without his consent and not by his fault. In other States the woman is not entitled to dower in any case of absolute divorce, and this is the rule in Massachusetts, Connecticut, North Carolina, Kentucky, and Missouri, except when the divorce was for cause of adultery by the husband, or for cause of sentence of the husband to prison, or when, after a decree *nisi* of divorce on the wife's libel, the husband dies before the decree is made absolute, in Massachusetts, or when the wife has been divorced without alimony, she being the innocent party, in Connecticut. Generally, a wife will forfeit her jointure, settlement, intestate share, or the provisions of her husband's will made in lieu of dower, by the same acts or in all cases where she would lose dower. And, as a rule, if a widow is lawfully evicted (without fraud on her part) from the jointure or the estate settled or devised in lieu of dower, she may still claim dower. Generally, also, a wife can lose her estate of dower by no act of her

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husband. This would seem to result from the common law as adopted in the United States, although in many States there is statute law to this effect.

Dower is in many States to be assigned either by the heir, remainder-man, reversioner, or devisee entitled to the land subject to dower. The heir or other person must assign it within forty days after the death of the husband in New Jersey; as soon as possible in Illinois, Arkansas, and Florida; within thirty days after the widow's demand in New Hampshire, Massachusetts, Maine, and Rhode Island; or she may apply at any time not before twenty days from the husband's death in Iowa and Kansas; or within one year after such death, or three months after demand, in Arkansas; or within two years after the husband's death in Missouri; or within two months in Florida; or after the expiration of three months from the husband's death in Georgia.

The widow must sue for or claim dower within five years after the husband's death in Kansas, within ten years in Iowa, within twenty years in Massachusetts and New York, within seven years in Georgia, within three years, when the rights of alienees of the husband are involved, in Alabama. In many of the States dower may also be assigned by the probate court in which the husband's es-

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tate is being settled, and this is the rule in Maine, Massachusetts, Vermont, Rhode Island, Connecticut, New Jersey, Pennsylvania, Michigan, Wisconsin, Nebraska, Maryland, Delaware, Virginia, Kentucky, Tennessee, Arkansas, Oregon, South Carolina, Alabama, and Florida. In cases of the assignment of dower by a court, the actual division or computation is made by either three or five disinterested commissioners appointed by the court, subject, as a rule, to the court's approval and confirmation. Usually, dower is assigned by metes and bounds, but when this cannot be fairly or conveniently done without injury, the widow may have dower assigned in a special manner, as in many States in one third of the rents and profits. In many States the usual place of residence, with out-buildings, is or may be, if the widow desire, included in the land assigned as dower.

When a widow is entitled to dower in the lands of her husband she may continue to occupy the same with the children and the other heirs, so long as they do not object, without having dower assigned, and so in Massachusetts, Vermont, Michigan, Wisconsin, Nebraska, and Oregon; or she may receive one third of the rents, issues, and profits of the same in Massachusetts, Michigan, Wisconsin, Virginia, West Virginia, and

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Oregon; or she may remain in the mansion-house free of rent until dower is assigned in Rhode Island, New Jersey, Ohio, Virginia, West Virginia, Kentucky, Missouri, Arkansas, Georgia, Alabama, and Florida. Whenever in any action for the purpose a widow recovers her dower in land of which her husband died seized she is entitled also to recover damages for the withholding of such dower in Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Illinois, Michigan, Wisconsin, Nebraska, Delaware, Virginia, West Virginia, Missouri, and Oregon. Such damages are one-third part of the rents and profits of the land in which the widow recovers dower in the States of New York, New Jersey, Michigan, Wisconsin, and Nebraska. In others of the States a widow is entitled to receive one undivided net third part of the rents and profits of the estate of which her husband died seized until her dower is assigned, and this is the law in the States of Maine, New Hampshire, Massachusetts, Vermont, Ohio, Kentucky, Missouri, Arkansas, and Oregon.

By the law of the State of New York, when a widow shall recover her dower in any lands alienated by the heir of her husband she shall be entitled to the recovery of damages for the withholding of such dower from the time of the death of her husband to the time

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of the alienation by the heir, not exceeding six years in all, and the amount which she shall be entitled to recover from such heir shall be deducted from the amount she would otherwise be entitled to recover from such grantee, and any amount recovered as damages from such grantee shall be deducted from the amount she would otherwise be entitled to recover of such heir. Such is the law in the States of Michigan, Wisconsin, Nebraska, and Oregon also. Dower in land that has been aliened by the husband is to be determined as against the purchaser according to the value of the land at the time of the alienation in the States of Michigan, Wisconsin, Nebraska, Kentucky, Oregon, South Carolina, or at the time that the widow recovers dower in Missouri.

In a number of States if, during the minority of an heir, dower is assigned to a widow who is not entitled thereto, or if a widow recovers dower by the default, fraud, or collusion of the guardian, such heir has an action against the widow to recover such lands on coming of age, and this is the law in New York, New Jersey, Ohio, Michigan, Wisconsin, Nebraska, Virginia, West Virginia, Missouri, and Oregon. In New Jersey and Kentucky it is declared that an heir is not bound by any collusive or ex-parte assignment of dower except so far as the widow shows her-

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self to be justly entitled thereto. So also in New Jersey, Virginia, West Virginia, and Kentucky the widow shall not be barred by reason of any judgment rendered by default or collusion against the husband if she would be entitled to dower had there been no such judgment.

As a general rule, an assignment of dower once made and accepted by the widow is a bar to her further claim of dower, and it is so declared in the States of New York, Michigan, Wisconsin, Kansas, Nebraska, Arkansas, and Oregon.

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A MARRIED WOMAN'S SEPARATE ESTATE

IT is a general rule throughout the United States at the present time that a married woman may receive, receipt for, hold, manage, dispose of, lease, sell and convey, devise, or bequeath her separate property, both real and personal, as if sole, without joining with or receiving the consent of her husband. She may generally make contracts and incur liabilities as if sole in the greater number of States. There are, however, certain limitations defined in the statute law. So, in the State of Georgia any restriction upon such powers of the wife made in a marriage contract must be complied with, and no contract of sale by a wife as to her separate estate with her husband or trustee is valid without an order of court. In the State of Maine a married woman cannot, without the joinder of the husband, convey real estate that has been directly or indirectly conveyed to her by him, or paid for by him, or given or devised to her by his relatives, except such property was conveyed to her as security or

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in payment of a bona-fide debt actually due to her from him.

By the Louisiana law a wife, even when she is separate in estate, cannot alienate, grant, or mortgage her property unless her husband concurs in the act or yields his consent in writing. If a husband refuses to empower his wife to contract she may cause him to be cited to appear before the proper judge, who may authorize her to make the contract or refuse to empower her after the husband has been heard or has made default. In carrying out the power to borrow money or to contract debts, a wife, in order to bind herself or her separate property, must be examined at chambers by the judge of the district or parish in which she resides, apart from her husband, concerning the objects for which the money is to be borrowed or the debt contracted, and if the judge discovers that either the one or the other is for her husband's debts, or for his separate benefit, the judge shall not give his sanction. If satisfied, the judge shall furnish the woman with a certificate which, presented to a notary, shall be his authority for drawing an act of mortgage. In the States of Oregon and Washington all laws which impose or recognize civil disabilities upon a wife which are not imposed or recognized as existing on the husband, except as to voting and holding public office,

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have been repealed. The State of Mississippi has enacted "that the common law as to the disabilities of married women, and its effect on the rights and property of the wife, is totally abrogated, and marriage shall not be held to impose any disability or incapacity on a woman, as to the ownership, acquisition or disposition of property of any sort, or as to her capacity to make contracts and do all acts which she could do, in reference to property, if unmarried." It is a general rule that a receipt by a husband of the rents and profits of the wife's separate property is a sufficient discharge, unless previous notice in writing is given by the wife. The States of Delaware, West Virginia, Kentucky, Arkansas, Alabama, and Florida have enacted that when a deposit of earnings in a savings-bank is made by a woman then or thereafter married, the bank may pay it out on receiving her personal receipt.

A married woman may, in most States, prosecute and defend suits concerning her own property as if sole. In the States of Maine, Delaware, and Texas she may sue jointly with her husband. But in the States of Rhode Island, Pennsylvania, Indiana, and Virginia a married woman must sue or be sued jointly with her husband. In Texas a wife, if her husband fails to sue, may have an order of court to sue in her own name.

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In Maine and Delaware a husband acting alone cannot maintain an action concerning the property of his wife.

In the States of Massachusetts, New Jersey, and Louisiana suits between husband and wife are not allowed, except, of course, for divorce, separation, etc., and in Louisiana for property with the permission of the court.

In the States of Indiana, Wisconsin, West Virginia, North Carolina, Kentucky, Missouri, Arkansas, California, Oregon, Nevada, Colorado, Washington, Idaho, the Dakotas, Montana, Wyoming, Utah, South Carolina, Georgia, Mississippi, and the Territory of Arizona a wife may prosecute an action against her husband, or defend one brought by him. In North Carolina, in all actions against a married woman, the husband must be served with the suit, and may with her consent be allowed to defend in her name. It is provided in Illinois, Iowa, Oregon, Washington, and Louisiana that if either a husband or a wife unlawfully obtains or retains possession or control of property belonging to the other, either before or after marriage, the owner may sue therefor as if they were unmarried. In Louisiana the husbands have in their control all of the personal and possessory actions to which wives are entitled, and may sue in their own names. But actions that relate to the dotal or paraphernal

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property must be brought by the wife, duly authorized by the husband or by the judge if the husband fails to do so. A suit against a married woman for a cause relative to her separate interest must be brought both against her and the husband. In the States of Maine, Wisconsin, Illinois, Iowa, Oregon, and Washington it is specifically provided that a married woman may sue for her earnings in her own name. A married woman may sue in her own name for an injury to her person and character as if sole in Maine, Indiana, Wisconsin, Delaware, Arkansas, Oregon, Colorado, and Wyoming.

In a number of States, if the husband and wife are sued together the wife may defend for her own right, and so it is declared in the States of Ohio, Illinois, Iowa, Kansas, Nebraska, Kentucky, Arkansas, California, Nevada, Colorado, Washington, Idaho, Montana, Wyoming, Utah, and in the Territory of Arizona.

A married woman owning stock in an incorporated company may vote at an election of officers by proxy or otherwise, except in the case of mutual fire-insurance companies, by the laws of New York and West Virginia. In Pennsylvania a married woman may sell and transfer shares of railroad stock as if sole, and so of stock in any company in Alabama. By the civil codes of California and

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the Dakotas shares of stock in corporations held or owned by a married woman may be transferred by her, her agent or attorney, without the signature of her husband, in the same manner as if such married woman were a feme sole; and any proxy or power given by a married woman touching any shares of stock of any corporation is valid and binding without the signature of her husband, the same as if she were unmarried. So also all dividends payable upon any shares of stock of a corporation held by a married woman may be paid to her, her agent or attorney, as if she were unmarried, and it is unnecessary for her husband to join in a receipt therefor.

The statutes of Colorado provide that a married woman may become a special partner either with her husband or with any other person; she may also contract with him or any other person as if sole, and in all suits arising from such a partnership she may be a witness against her husband.

An attorney who has acted on behalf of a married woman may look for his fee either to her husband or to her trustee, or to her property or to herself. As a wife at common law always sues and is sued jointly with her husband, and since he employs counsel for them both, the payment of the fees naturally falls upon him. But when he, by his conduct, makes it necessary for her to take pro-

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ceedings against him, the question arises whether he is not liable for the expenses of the suit as for necessaries. It has been held that when a wife sues out a peace warrant against her husband, or defends herself against a similar proceeding by him, or when she sues for a separate maintenance, her legal expenses are necessaries for which her husband is liable. The expenses of a wife in bringing or defending a divorce suit have been held to be necessaries in the States of Georgia, Iowa, Kansas, and Maryland, while the contrary is the rule in the States of Alabama, Connecticut, Illinois, Indiana, Kentucky, Massachusetts, New Hampshire, Ohio, Tennessee, and Vermont. Even where such legal expenses may be considered as necessaries they are not of necessity so, for there must exist a reasonable ground for bringing the suit, or some real defense in resisting it. Besides this, the courts usually provide for counsel fees in divorce cases under their jurisdiction to award alimony.

The trustee of the separate property of a married woman may employ an attorney, and although he binds himself personally to compensate the attorney, he has a right to repay himself out of the estate.

At the common law a married woman could not appear by an attorney in a suit unless he were appointed to serve by her

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husband, and therefore her contract to pay counsel fees was absolutely void.

Under the usual statutes, however, that authorize a married woman to enter into contracts generally, there seems to be no reason why she should not contract for counsel fees, and when by a statute a married woman is authorized to contract with respect to her property, a contract for legal services relating to such property would be valid. Whether when she may employ legal counsel she binds herself personally or binds only her property seems to be an unsettled question. When a wife is liable for family expenses, whether or not counsel fees are a family expense must depend on the particular circumstances of the case.

In the States of New York and West Virginia the law declares that every woman resident in the State who shall receive a patent for her own inventions, under the laws of the United States, may hold and enjoy the same and all proceeds therefrom to her separate use, and transfer and dispose of the same as if unmarried. But in New York this provision does not authorize her to contract any pecuniary obligations to be discharged at a future time. In New Hampshire if a husband becomes insane the wife may hold to her own use the earnings of their minor children during such insanity.

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The proceeds of any part of a wife's separate property that has been sold are declared to be her separate property in the States of Vermont, Connecticut, Kansas, Nebraska, Maryland, Delaware, Kentucky, Tennessee, Missouri, Arkansas, and Alabama. The Kentucky law provides that any corporate stock in the name of a female, and expressed on the face of the certificate to be for her use, belongs to her free from all claims on the part of the husband, and passes by her will or by descent to her heirs, and she may receive dividends and give receipts as if unmarried, but may not anticipate the same or give orders in advance therefor.

There is a certain kind of property of a woman which in Georgia is called "paraphernalia," and which in the States of Rhode Island, Colorado, Georgia, and Louisiana is not subject to the debts nor the control of the husband. Such property consists, first, of her wearing apparel (in Colorado and Georgia); second, the wearing apparel of her children (in Georgia); and, third, of her ornaments suitable to her condition in life (in Georgia); so especially her watch (in Colorado and Georgia); her jewelry (in Rhode Island and Colorado); silver and tableware (in Colorado); and plate (in Rhode Island), and, generally, all such articles as have been given to her for her own use and comfort.

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By the law of Louisiana, all property which is not declared to be brought in marriage by the wife or to be given to her in consideration of her marriage or to belong to her at the time of the marriage is regarded as paraphernalia. Such property the wife has a right to administer personally, without the assistance of her husband; but all of the paraphernal property which is not administered by the wife alone is considered to be under the management of the husband. When the paraphernal property is administered by the husband, or by him and the wife indifferently, the fruits of such property, whether natural or the result of labor, belong to the conjugal partnership if there exist a community of gains. If such a community does not exist, each party enjoys that which comes to his hand. A wife who has left to her husband the administration of her paraphernal properties may afterward withdraw it from him. The husband who administers the paraphernal properties of his wife is accountable to her for all the profits. If all the property of the wife is paraphernal in its legal nature, and she has reserved to herself the administration of it, she may be required to bear a part of the expenses of the establishment maintained by herself and her husband equal, if necessary, to one half of her income. The wife may alienate her para-

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phernal properties, with the assent of her husband, or, in case of the refusal of the husband to give his sanction, or of his absence from home, then with the sanction of the judge. In the event of its being proved that the husband has received the amount of the paraphernal property thus alienated by his wife, or has otherwise disposed of the same for his individual interest, the wife has a legal mortgage on all of the property of her husband, in order that she may be reimbursed. The wife has, even during marriage, a right of action against her husband for the restitution of her paraphernal effects and their profits.

According to the law of the State of Louisiana, based upon the civil law, the separate property of a wife is regarded as being of two kinds—dotal and extradotal. Dotal property is that which a wife brings to her husband to assist him in bearing the expenses of the marriage establishment. Extradotal property, which is otherwise called paraphernal property, is that which forms no part of the dowry.

Whatever in the marriage contract is declared to belong to the wife, or to be given to her on account of the marriage by other persons than the husband, constitutes the dowry, unless there be an express stipulation to the contrary. The settlement of the dowry

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may include all the present and future effects of the wife, or her present effects only, or, again, a part of her present and future effects, or even an individual object. Dowry cannot be settled nor can it be increased during the marriage. It can be settled either by the wife herself or by her father or mother or other ascendants, or by strangers. If the father and the mother jointly settle a dowry, without distinguishing the portion that each settles, it is supposed to be constituted of equal portions. If, however, the dowry is settled by the father alone, the mother, although present at the making of the contract, is not bound, but the father alone is liable for the whole amount of the dowry. If a surviving father or mother settle a dowry without specifying the portions, the dowry shall be first taken out of the rights of the future wife in the succession of the deceased father or mother, and the rest out of the estate of the person who settled the dowry.

The interests of the dowry begin of right from the day of the marriage against those who have promised it, although there may be time given for the payment, unless there is an express stipulation to the contrary. A dowry is given to a husband to enjoy as long as the marriage shall last. The income or proceeds of the dowry belong to the husband,

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and are intended to help him support the marriage establishment. The husband alone has the administration of the dowry, and the wife cannot deprive him of it, and he may act alone in a court of law for the preservation or recovery of the dowry against any persons who either owe or detain the same, but this does not prevent the wife from remaining the owner of the effects which she brought as her dowry. In case, however, of the husband's absence or his neglect to sue for the dowry of his wife, she may sue for it herself, having first received permission from the proper judge. The husband cannot be required to give security upon his receiving the dowry, unless he is bound to do so according to the terms of the marriage contract.

A wife may, with the consent of her husband, or, upon his refusal, with the authorization of the judge, give her dotal effects for the establishment of the children she may have by a former marriage, but if her only authority is her permission obtained from the judge she is required to reserve the enjoyment of the property to her husband during his lifetime. With her husband's consent, the wife may make such a settlement on their common children.

If immovable effects have been settled as dowry, they may be alienated with the con-

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sent of the wife, if such an alienation has been allowed by the terms of the marriage contract, but the value of such immovables must be reinvested in other forms of immovable property. The wife may also mortgage her dotal property.

If a dowry is in danger of being lost, the wife may sue for a separation of property. If any of the immovables the ownership of which is vested in the wife have been destroyed or have grown less valuable by use, and this without any neglect on the part of the husband, he is bound to restore at the dissolution of the marriage only such as may remain; nevertheless, the wife may on the dissolution of the marriage take back her linen, clothing, and jewels in her actual use. If the dowry includes bonds or credits which could not be recovered owing to the insolvency of the debtors or otherwise, but not owing to the fault or neglect of the husband, he is not answerable at a dissolution of the marriage for the condition of the dowry, but is bound only to restore the instruments or vouchers upon which the credits are founded. If a dowry consists of a usufruct, the husband or his heirs, at the time of the dissolution of the marriage, are required only to return the right of usufruct, and not the profits which accrued during the marriage. Where there are herds or flocks as part of a

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dowry, not valued in the marriage contract or valued with a declaration that the estimated value does not deprive the wife of her property in the same, the husband is bound only to deliver such proportion of the increase or young proceeding from such flocks and herds during the period of the marriage as shall be necessary to complete the whole number of head of cattle that he originally received.

If the marriage is dissolved by the death of the wife, the interests and profits of the dowry go to the benefit of her heirs from the day of her death. If, however, the marriage is dissolved by the death of the husband, the wife has her choice either to claim the interests of her dowry during the year of mourning or to claim a maintenance, to be taken out of the succession of her husband. But in both cases the wife has the right during the year of mourning to be supplied with a home and with mourning clothes out of the succession, which charges must not be deducted out of the interests due to her.

A wife has a legal mortgage on the unmovable property, and a privilege on the movable property of her husband, first, for the restitution of her dowry, as well as for the replacing of her dotal effects which she brought at the time of her marriage, and which were alienated by her husband; sec-

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ond, for the restitution or the replacing of the dotal effects which she acquired during the marriage, either by succession or by donation.

During the marriage the husband may, with the consent of the wife, if she be of age, be authorized by the judge, with the advice of five of the nearest relatives of the wife, or friends, for want of relations, to mortgage, specially for the preservation of his wife's rights, the immovable property which he shall designate, and in that event the surplus of his property is free from any legal mortgage in favor of his wife. If the wife be a minor, the judge may still grant this permission, provided that it has the assent of a family meeting and of a curator *ad hoc* appointed to the wife.

If a wife has not brought any dowry, or when what she has brought as a dowry is very inconsiderable in respect to the condition of the husband, if either the husband or the wife die rich, leaving the survivor in need, the latter has the right to take out of the succession of the deceased what is called the *marital portion*—that is, a fourth of the succession in full property—if there be no children, and the same proportion in usufruct only when there are but three or a smaller number of children; and if there be more than three children, the survivor,

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whether husband or wife, shall receive only a child's share in usufruct, and he is required to include in this portion what has been left to him as a legacy by the husband or wife who died first.

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THE PROPERTY RIGHTS OF MARRIED WOMEN

ALABAMA

IN the State of Alabama the right of a married woman in the estate of her husband is that of dower only. If there are no lineal descendants, and the estate is solvent, the dower interest is one half of the real estate during the life of the widow, but if the estate is insolvent then one third only. If there are lineal descendants, then the dower right is one third, whether the estate is solvent or not. If a husband dies intestate his widow, if there are no children, is entitled to all of his personal estate; if there is but one child, she is entitled to one half; if there are more than one child and not more than four children, then the widow is entitled to one child's portion; and if there are more than four children, then she is entitled to one fifth.

If any woman having a separate estate survive the husband, and such separate estate, exclusive of the rents, incomes, and profits, is equal to or greater in value than her dower

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interest and distributive share in her husband's estate, estimating her dower interest in his lands at seven years' rent, she shall be entitled to dower in or a distributive share of her husband's estate. If her separate estate be less in value than her dower, so much must be allowed her as with her separate estate would be equal to her dower and distributive share in her husband's estate if she had no separate estate. If a wife dies intestate, her husband is entitled to one half of the personal property of her separate estate absolutely, and to the use of the real property during his life, unless he has been legally divested of all control over it by a decree of a court of chancery.

ARIZONA

Both the rights of dower and of curtesy have been abolished by territorial legislation, but Congress in 1887 passed a law, operative in all of the Territories, giving dower to a widow. If either the husband or the wife dies intestate, leaving descendants of the separate property of either, the survivor has one third of the personal property and one third for life of the real property. If there are no descendants, the survivor has all of the personal estate and one half of the real estate for life; and if there are neither descendants

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nor a father or mother of the decedent, the survivor takes the whole of the estate. The community estate goes complete to the survivor if there are no descendants; otherwise, one half of such property goes to the survivor, charged, however, in either case with the community debts.

The code of 1887 (Section 1099) reads: "If the widow has a maintenance, derived from her own property, equal to the portion set apart to her by the preceding sections of this article (two thousand dollars), the whole of the property so set apart other than her half of the homestead must go to the minor children." If a homestead was selected from the community property it vests absolutely in the survivor. If, however, it was selected from the separate property of either, it rests in that one or his heirs. A homestead cannot exceed five thousand dollars in value.

ARKANSAS

In this State both of the rights of dower and curtesy exist, but curtesy only if the wife dies intestate and there has been issue of the marriage born alive. If there are children the wife is entitled to one third of the real property for her life and one third of the personal property absolutely. If there are no children living, the widow is invested in

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fee simple of one half of the real estate where it is a new acquisition and not an estate of inheritance, and one half of the personal estate absolutely as against the collateral heirs; but as against creditors, she shall be endowed of one third of the real estate in fee simple, if a new acquisition and not ancestral, and one third of the personal property absolutely. Provided, however, if the real estate of the husband is an ancestral estate, the widow shall be endowed of a life estate of one half of such estate as against collateral heirs, and one third as against creditors. If either the husband or the wife dies intestate and there are no descendants, father, mother, nor their descendants, nor any paternal or maternal kindred capable of inheriting, the whole estate goes to the surviving wife or husband both as to real and personal property.

CALIFORNIA

In this State neither the right of curtesy nor dower obtains. If the decedent leaves a surviving wife or husband and only one child, or the lawful issue of one child, the separate estate goes in equal shares to the surviving wife or husband and the child, or the issue of such child. If there is a surviving wife or husband and more than one child living, or one child living and the lawful issue of one

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or more deceased children, then one third of the separate estate goes to the surviving wife or husband.

If there is a surviving wife or husband, but neither issue, father, mother, brother, nor sister, the whole of the estate goes to the surviving wife or husband. Upon the death of the wife all of the community property, without administration, goes to the husband, except such a part as may have been set aside for her support by a judicial decree, which part is subject to testamentary disposition or passes on to her heirs, exclusive of her husband, if she leaves no will. Upon the death of the husband, one half of all the community property goes to the wife, subject to one half of the debts.

COLORADO

In this State neither the right of curtesy nor of dower obtains. The surviving husband or wife, if there are children or the descendants of children living, receives, subject to the payment of debts, one half of the entire estate, both real and personal. If there is no child nor the descendants of any child living, the entire estate goes to the survivor. A homestead in value not exceeding two thousand dollars may be retained by the surviving husband or wife or the minor children.

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CONNECTICUT

To a woman married before the twentieth day of April, 1877, who with her husband has not accepted the conditions of the Connecticut law of the date mentioned, there belongs the common-law right of dower—that is, a life interest in one third of the real property of which her husband died possessed, and one third absolutely of the personal estate if there is no issue living, otherwise one half. The husband, under the same conditions, can claim as a tenant by curtesy the whole of the wife's personal estate, and if she dies intestate the use for his life of her real estate.

By the provisions of the law of June 22, 1895, the interest of the surviving husband or wife in the estate of the other is the same —namely, if there is no will, one third absolutely of the whole estate, and if there are no children or their representatives, all of the estate of the decedent absolutely to the extent of two thousand dollars and one half absolutely of the remainder of such estate.

DELAWARE

THE rights both of dower and curtesy exist in this State. If there is a child or the lawful issue of a child living, the widow has a life

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interest in one third of the real estate and one third absolutely of the personal property. If there is no child nor the descendants of any child living, the widow has a life interest in one half of the real estate and one half absolutely of the personal estate. If there are neither descendants nor kin—brothers, sisters, their descendants, father, and mother—the widow has the entire real estate for her life and the personal estate absolutely. If a child of the marriage was born alive, whether living or dead at the death of the wife, the husband surviving, as tenant by the curtesy, has her entire real estate during his life, and the whole of her personal estate absolutely, subject to all legal claims. If there has not been a child born alive, the husband has a life interest in one half of her real estate, but the whole of the personal estate also.

THE DISTRICT OF COLUMBIA

In the District both dower and curtesy obtain. The dower of the widow is one third of the real estate for her life and one third of the personal property absolutely if there is a child or if there are any descendants living. If there is no issue nor the descendants of any, but father, mother, brother, sister, or the descendants of any, the widow re-

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ceives one half of the personal estate. If there are none of these, the widow may have all the personal estate and all of the real estate if there is no kindred.

FLORIDA

In this State dower only obtains. The law is that if a husband dies intestate or the will makes no provision for his widow, or a provision that is not satisfactory to her, she may have dower in one third of the real estate for her life, and if there are no children, or but one child, the widow may have one half of the personal estate absolutely and free from liability for the debts of the husband. If there are no children and the husband dies intestate, the wife may take the whole estate or dower, at her election. If a wife dies intestate and the husband but no descendants survives her, the whole of her estate goes to the husband; but if there are children or their descendants, the estate, both real and personal, descends in distribution to them.

GEORGIA

In the State of Georgia the right of dower obtains, but not that of curtesy. If a husband dies intestate, leaving a wife and issue also, the wife may elect to take dower—that

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is, a life interest in one third of the real estate—or she may elect to take a child's share of the whole estate absolutely, unless the shares exceed five in number, in which case she is entitled to one fifth of the estate. If there are no lineal descendants and the wife dies intestate, the husband is the sole heir. If there is a surviving child or children, or the descendants of any child, the husband and the children have equal shares of the estate.

IDAHO

In this State neither the right of dower nor of curtesy obtains. If either the wife or the husband dies intestate, the surviving husband or wife has one half of the separate estate of the other if there is but one child or the lawful issue of one child living. If there be more than one child living, and the lawful issue of one or more deceased children, the surviving wife or husband receives one third of such an estate. If the decedent leaves a surviving wife or husband but neither issue, father, mother, brother, nor sister, the whole of the estate goes to the survivor. Upon the death of the wife the entire community property belongs to the husband, without an administration, except any portion that a judicial decree may have set apart for the wife's maintenance, and which, in the

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absence of any will made by her, descends to her heirs, exclusive of her husband. Upon the death of the husband, one half of the community property goes to the wife, while the other half is subject to his testamentary disposition, or, in the absence of such disposition, goes equally to his descendants. If, however, the husband leaves neither a will nor descendants, this portion of the community property is subject to distribution in the same manner as his separate estate.

ILLINOIS

In the State of Illinois the right of curtesy was abolished by the law of July 1, 1874. A surviving wife or husband is endowed of a third part of all the real estate of which the other dies possessed. If a wife or husband dies intestate, leaving a surviving child or children, or descendants of such a child or children, the surviving wife or husband receives, in addition, one third of the personal estate absolutely. If, however, there are no lineal descendants, the widow or widower receives absolutely one half of the real estate and the whole of the personal estate. If there are no descendants and no kindred, the whole estate goes to the surviving widow or widower.

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INDIANA

THE rights of both dower and curtesy have been abolished in this State. If a husband die, either testate or intestate, and leaves a widow, one third of his real estate descends to her in fee simple, free from all the claims of creditors—provided, however, that where such real estate exceeds in value ten thousand dollars the widow is entitled to a one-fourth part only, and where such real estate exceeds in value twenty thousand dollars the widow is entitled to a one-fifth part only as against creditors. If a husband dies intestate and leaves a widow and one child, the real estate is divided equally between them and the personal estate is divided equally if there are not more than two children. If, however, there are more than two children, the widow is still entitled to one third of the personal estate.

If there are children to a man living by a former marriage, and none by a subsequent marriage, the wife in the last marriage receives only a life interest in her share of her husband's estate.

If a wife die, either testate or intestate, leaving a husband, one third of her real property descends to him, subject to its proportion of her debts contracted before marriage,

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and also one third of her personal estate. If either a husband or a wife die intestate, leaving no child, but a father or a mother, or both, then three fourths of the entire estate goes to the widow or widower, unless it does not exceed one thousand dollars in value, in which case it all goes to the widow or widower. If there are neither children, father, or mother, the entire estate goes in the same way. If a will has been made, either the wife or the husband may elect to take under the will or under the statute, the election to be made within ninety days after the will has been admitted to probate.

IOWA

Both of the rights of dower and curtesy have been abolished in this State. The surviving wife or husband is entitled to a one third part in fee simple of both the real and personal estate of the other at her or his death. If either the wife or the husband die intestate, leaving no children, one half of the estate goes to the survivor and the remainder to her or his parents, one or both; or if such persons are both dead, then to their descendants. If there are no such descendants, the whole estate goes to the surviving wife or husband. If there have been more than one wife or husband, the one-half portion is di-

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vided equally between the wife or husband living and the heirs of those who are dead. Both the personal and real property follow the same rules.

KANSAS

In the year 1868 the rights both of dower and curtesy were abolished in the State of Kansas. If either a husband or a wife dies intestate, one half of both the real and the personal estate goes to the survivor; if there is no issue living, the whole goes to the survivor.

A homestead of one hundred and sixty acres of farm land or a parcel of land one acre in extent within town or city limits may be reserved, free from debts, for the occupancy of the survivor. If a widow marries again or when all of the children have attained their majority the homestead may be divided, one half passing to the widow and the remainder to the children. If a wife dies before her husband, he has a right of occupancy, but such a right descends to her heirs.

Neither a wife nor a husband can will more than one half of her or his property away from the other without the other's consent.

KENTUCKY

By an act that became law on March 15, 1894, the interest of a surviving husband or wife

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in the estate of the other is made the same—that is, a one-third life interest in the real estate, if such a right has not been barred, forfeited, or extinguished, and an absolute right in one half of the personal estate in excess of the amount of debts. If a husband or a wife dies intestate, and leaves neither descendants or kindred, the whole of the estate goes to the surviving wife or husband. If either a husband or a wife dies intestate and without descendants that are living, any real estate that was a gift from either the descendant's parents returns by law to that parent, if living.

LOUISIANA

In the State of Louisiana there is neither of the rights of curtesy or of dower. The law provides that at the death of either a husband or a wife the survivor is entitled to one half of all the community property absolutely. If there are no descendants or ascendants, the survivor has also a life interest in the other half. If living issue are left the law gives to the survivor tenant for life "so much of the share of the deceased in such community property as may be inherited by such issue, until a second marriage is contracted."

If a widow or a widower marries again, having children, she or he can give to such

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wife or husband either by will or by gift during life only one third of her or his property. If a wife brings no dowry, or one that is inconsiderable in respect to the condition of the husband, if either the husband or the wife die rich, leaving the survivor in need, the latter has a right to receive out of the succession of the deceased what is called "the marital portion"—that is, one fourth of the succession in full property if there are no children, and the same portion when there are three or a smaller number of children. If there are more than three children, the husband or wife receives only a child's share, including any legacy left by the decedent.

The separate property of the husband or wife in the care of the husband is also divided equally, like the community property on the dissolution of the marriage by death. If a husband dies poor, the widow takes precedence over all creditors to the amount of one thousand dollars. A wife may renounce the partnership, and thus free herself of the community debts, but if she takes such action she forfeits her share of such property, and receives instead her dotal and extradotal effects. A wife may petition for a separate management of her dowry if such action is considered necessary to ensure its safety.

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MAINE

By a law of March 26, 1895, the rights of dower and curtesy were abolished in this State. The interest of the husband or wife in the real estate of the other, dying intestate, is made the same; if there is issue of the marriage living, one third when there is no such issue, then one half; if there is neither issue nor kindred, then the whole of the real estate. The same provisions of law hold regarding the personal estate of each. Both a wife and a husband have the right to claim their statutory share in the estate of the other in preference to any provision that may have been made by a will, provided that such an election is made within a period of six months.

MARYLAND

In this State the rights of dower and curtesy both obtain. If a husband dies intestate his widow has a life interest in one third of his real estate, unless there are neither descendants nor kindred, in which case the widow comes into possession of the entire estate. If there are descendants, the widow is entitled to one third of the personal estate. If, however, there are no descendants but father, mother, brother, or sister of the decedent, or any descendants of such brother or

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sister, the widow is entitled to a portion of one half of the personal property. If there are none of these heirs, a widow is entitled to all of the personal estate.

If a wife dies intestate, her husband has a life estate in all of her property, and if she leaves no children he has a life estate in the real and personal property.

MASSACHUSETTS

By the law of Massachusetts the rights of dower and curtesy both obtain. If a husband dies intestate and there is no issue living, the widow receives for her life one third of the personal estate. If there is no living issue of the marriage, a widow is entitled to the real estate of her husband absolutely to an amount not exceeding five thousand dollars in value and to a life interest in one half of the remainder of his real estate, or, at her election, a life interest and, in accordance with the legal requirements, her dower in her husband's real estate other than that taken by her in fee.

A widow is entitled to all of the personal estate up to the amount of five thousand dollars in value, and to one half of the excess of the residue above ten thousand dollars. If there are no kindred of the husband, the widow takes the whole of his real estate in

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fee. If a wife dies without leaving a will, and there has been issue of the marriage born alive, the widower has a life estate in her real property. If there has been no issue of the marriage, the widower has an interest for his life in one half of his wife's real estate. If a wife leaves no issue living, the husband takes her real estate absolutely to an amount not exceeding five thousand dollars in value and a life interest in the residue of her real estate. If a wife leaves no kindred, the husband takes all of her real estate absolutely. In any case, if a wife dies intestate the husband takes all of her personal estate.

MICHIGAN

THE right of dower obtains in this State, but not that of curtesy. Such dower is a life interest in one third of the real estate of the husband. In case there is no issue of the marriage and either the husband or the wife dies intestate, one half of the real estate goes to the survivor. If there are no issue of the marriage, nor father, mother, brothers, sisters, or the children of brothers or sisters, all of the estate goes to the survivor.

If a husband dies intestate, one third of his personal property goes to the widow, unless

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if there is but one child or the issue of one child living, in which case the widow receives one half of such property. If there is no child living, or only the issue of a deceased child, and the personal estate, after the payment of debts, does not exceed one thousand dollars, such estate goes entirely to the widow. If such personal estate exceeds the sum of one thousand dollars, such an excess is to be distributed, one half to the widow and the other half to the father of the deceased, if living; otherwise, equally to the mother, brothers, sisters, and the issue of any deceased brother or sister. If there are none of these persons, the widow takes all such property.

If a wife dies intestate, one third of her personal estate goes to her husband if there are children living. If there is but one child, or the issue of one child deceased, surviving her, the husband has one half of the personal estate. If there is no child or the issue of a deceased child surviving her, one half of such an estate goes to the husband and one half to her father, if living. If her father is not living, then the one half goes equally to her mother, brothers, sisters, and any children of brothers and sisters deceased. If there are none of these persons, then all of such estate goes to the husband.

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MINNESOTA

By a law that went in effect on the 9th of March, 1875, the rights of dower and curtesy were both abolished. If either husband or wife dies intestate, the survivor, if there is issue of the marriage living, is entitled to the homestead for the period of her life and one third of the residue of the real estate in fee simple, or by such inferior tenure as the deceased was possessed of, but subject to its just proportion of the debts. If there are no descendants, the entire estate goes absolutely to the survivor. A personal estate follows the same rules.

If either the husband or the wife has wilfully and without a just cause deserted and lived separately from the other for the entire year next prior to his or her decease, the survivor is not entitled to any estate whatever in any of the lands of the deceased.

MISSISSIPPI

The rights of dower and curtesy have been abolished in this State. If either the husband or the wife dies intestate, without leaving children or the descendants of any children, the entire estate, both real and personal, goes to the survivor. But if there are one or more children or descendants by this or a

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former marriage, the surviving wife or husband has the share of a child in both the real and the personal estate.

MISSOURI

THE rights of dower and curtesy both obtain in this State. If there are any descendants living, the dower of a widow is one third of the real estate and the share of a child in the personal estate. If there are no descendants, a widow is entitled to all of the real and personal estate which came to her husband in right of the marriage, and also to all of the undisposed of personal property which by her written consent came into her husband's possession, not subject to the payment of her husband's debts. The wife is also entitled to one half of the real and personal estate of her husband absolutely, and subject to his debts. If there are any descendants by a former marriage, a widow may elect, in lieu of dower, to take in addition to her real estate the personal property in the possession of her husband that came to him in right of the wife by means of the marriage or by her consent, subject to her husband's debts.

If there are no descendants living, the widow may elect to take one third of his real estate for her life, free from liability for his debts, or according to the provisions men-

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tioned if there are no descendants. If there are descendants living, the widow, in lieu of her one-third portion for life, may elect to take the share of a child absolutely, subject to the payment of any debts. If any person dies intestate, leaving neither descendants, father, mother, brothers, sisters, or the descendants of brothers or sisters, the entire estate, both real and personal, goes to the surviving husband or wife. A homestead may be reserved for a widow. If a wife dies leaving no descendants, her spouse is entitled to one half of both real and personal estate absolutely, subject to her debts.

MONTANA

In this State the right of dower has been retained, but that of curtesy has been abolished. The claims of the husband and the wife in the estate of the other are equal. If there is but one child, or the lawful issue of one child, the surviving husband or wife receives one half of the entire estate, both real and personal. If there is more than one child, or one child and the lawful issue of one or more deceased children, the husband or wife receives one third of such estate. If there is no issue living, the surviving husband or wife receives one half of the estate, unless there is neither father, mother, bro-

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ther, sister, or their descendants, in which case the husband or wife takes all of the property.

By an act of March 6, 1891, the provision that "a married woman may be an executrix, administratrix, guardian, or trustee, and bind herself and the estate she represents without any act of assent on the part of her husband," was repealed.

NEBRASKA

The rights of dower and curtesy both obtain in this State. A widow is entitled to the use for life of one third of the real estate, and in case the husband dies intestate, after the payment of all debts, charges, etc., to the same share of the personal estate that a child receives. If there is no issue living, a widow takes the use for her life of the entire estate, both real and personal. If there is no kindred of the husband, the widow comes into possession of the real estate absolutely. If a wife dies, leaving no issue, the husband has the use of her real estate during his lifetime. If, however, a wife leaves issue by a former husband, such issue are entitled to so much of the estate as did not come to her as a gift from her surviving husband. If a wife leaves issue by the surviving husband only, or by both former and surviving husbands,

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then the surviving husband has a life interest in one third of the real estate of his deceased wife. If a wife dies intestate, after the payment of her debts her personal estate is distributed in the same way as her real estate.

NEVADA

The rights of dower and curtesy have both been abolished in this State. At the death of a husband one half of the community property goes to the wife. If the husband dies intestate and leaves no issue, all of the community property goes to the wife, and without an administration if she secures the payment of all debts to the satisfaction of the creditors.

If either the husband or the wife dies intestate as to their separate estate, and there is one child or the lawful issue of one child living, the surviving wife or husband receives one half of the estate. If there is more than one child living, or one living and the lawful issue of one or more deceased children, the survivor takes a third. If there is no issue living, the survivor takes a one-half portion, providing that there is either father, mother, brother, or sister of the decedent living. If there are no such persons living, the surviving wife or husband is entitled to the whole estate.

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The community property is under the control of the husband, and upon the death of the wife belongs to him without an administration, unless he has abandoned his wife without such a cause as would secure for him a divorce, in which case a half of the community property is at her disposal by testament, or, in the absence of such disposition, descends to her heirs, exclusive of her husband.

In order that a wife's separate property may not be claimed as a part of the community property it must be kept inventoried and recorded according to law. An interest for life in a homestead not exceeding five thousand dollars in value may be detained by a surviving husband or wife in addition.

NEW HAMPSHIRE

In this State the rights of dower and curtesy both obtain. The widow of a man who dies either testate or intestate, by waiving any provision of his will that may be in her favor, is entitled, in addition to her dower and homestead rights, to a portion of his personal estate remaining after the payment of his debts and the expenses of administration, and to one-third part of the real estate if the husband leaves issue by her surviving him, and to all of such estate if he leaves no issue surviving him.

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A husband of a wife dying either testate or intestate, by waiving any provision of a will in his favor, is entitled, in addition to his estate by the curtesy and his homestead right, if any, to one-third part of his wife's personal estate remaining after the payment of debts and the expenses of administration if the wife leaves issue surviving her, and to one half of such estate if the wife leaves no issue surviving her.

If a husband waives the provisions of his wife's will, and foregoes his estate by the curtesy and his homestead right, if any, he is entitled in lieu thereof, after the payment of debts and the expenses of administration, to a one-third part to possess in fee if the wife leaves issue by him surviving her, also a one-third part to hold during his life if the wife leaves issue surviving her but not by him, and if he has no estate by the curtesy in the real estate, then one half to hold in fee if the wife leaves issue surviving her. Such a waiver must in all cases be made in writing and filed in probate office within one year of the decease of the husband or wife.

NEW JERSEY

Both dower and curtesy obtain in this State. If either a husband or a wife dies intestate, and there are neither descendants nor kindred, the entire estate goes in fee simple to

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the survivor. If there are children, a widow has one third of the personal estate, and also a life interest in one third of the real estate. If there are no children, the widow is entitled to a one-third portion of the personal estate.

THE TERRITORY OF NEW MEXICO

In this Territory the right of curtesy still obtains. One half of the community property goes to the wife whether the husband dies testate or intestate. In addition to such a right, a widow is entitled to a one-fourth part of the remainder of the estate of her husband, "provided this deduction shall only be made when said property amounts to five thousand dollars and the heirs be not descendants, although it may exceed this sum in the absence of the latter. Also from the property of the wife the fourth shall be deducted as the marital right of the husband, and upon the same conditions, should the husband without this aid remain poor." If there are no legitimate children surviving, a widow or widower is heir to all the acquired property of the marriage community.

NEW YORK

In this State the rights of dower and curtesy obtain. A widow receives one third of the real estate of her husband for her life, and,

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after the payment of debts, one third of the personal estate, unless there are no descendants, in which case she is entitled to one half of the personal estate if her husband died intestate. If there are neither descendants, parent, brother, sister, nephew, or niece, the wife has the whole of the personal estate; but if there is a brother, sister, nephew or niece, the widow is entitled to one half of the personal estate, and to the whole of the residue if it does not exceed two thousand dollars. If the residue exceeds in value that amount, the widow is entitled to receive two thousand dollars in addition to one half.

The husband is entitled to the same distributive share in the personal property of his wife as she has in his property.

NORTH CAROLINA

In this State both dower and curtesy exist. If there are neither descendants nor kindred, the widow is heir to the entire estate. In case there are not more than two children, and the husband dies without leaving a will, one third of the personal estate goes to the widow. If there are more than two children, the widow shares equally with them. If there is no child nor a legal representative of a deceased child, one half of the estate

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goes to the widow and the other half goes to the kindred of the deceased.

If a wife dies intestate, her husband has a life estate in her real property if there was issue born alive, and all of her personal estate, subject to the payment of her debts.

NORTH DAKOTA

THE rights of dower and curtesy have been abolished in this State. If either a husband or a wife dies intestate, leaving only one child or the lawful issue of one child, the surviving wife or husband is entitled to one half of both the real and personal estate. If there is more than one child living, or one child and the lawful issue of one or more children, the survivor receives one third of the estate. If there is no issue living, the survivor receives one half of the estate; and in case there is no issue living, and neither father, mother, brother, nor sister, the whole of the estate goes to the survivor. The survivor is also entitled to retain a homestead.

OHIO

IN this State the right of dower obtains, but the right of curtesy has been abolished, except in the case of a man married before the

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year 1887 and in respect to property owned by his wife before that date. Other than in such a case, either a husband or a wife, on the death of the other, is entitled to one third of the real estate for life. If either the husband or the wife dies intestate and there are no children nor their legal representatives living, the real estate should all pass to the survivor. If either dies intestate and there are no children, the widow or the widower is entitled to all of the personal property, subject to the payment of debts. If there are children or their legal representatives, the widow or widower is entitled to one half of the first four hundred dollars and to one third of the remainder in distribution. There may be reserved also for a widow an amount not exceeding one thousand dollars' value.

By a law of June 30, 1899, a married woman may be an executrix or an administratrix, and by a law of April 18, 1893, a married woman may be a guardian.

OKLAHOMA TERRITORY

THE rights of dower and of curtesy have been abolished in this Territory. If either a husband or a wife dies without leaving a will, and leaving only one child or the lawful issue of one child, the survivor is entitled to one half of both the real and personal prop-

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erty. If there are two or more children, or one child and the descendants of one or more deceased children, the widow or widower receives one third of the estate. If there is no issue living, the survivor receives one half of the estate, and if there is neither issue, father, mother, brother, or sister, the survivor is entitled to all of the estate.

The survivor is also entitled to occupy a homestead until the same is otherwise disposed of according to law.

OREGON

In this State the rights of dower and of curtesy obtain, and curtesy is not made conditional upon the birth of a living child. If either a husband or a wife dies intestate, and there are no descendants living, the real estate descends to the survivor. If there is issue living, the widow is entitled to one half of the real estate and to one half of the personal estate. If there is no issue living, the widow is entitled to all of the personal property in addition. A husband is entitled to a life estate in all of the real property of his wife, together with all of the personal estate in case there are no living descendants. If there are such descendants, then the husband is entitled to one half of such estate.

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PENNSYLVANIA

In this State the rights of dower and curtesy both obtain. If there is no issue living, a widow is entitled to one third of the real estate during her life and to one third of the personal property absolutely. If there is no issue living, but there are collateral heirs, the widow is entitled to one half of the real estate, including a homestead house for her lifetime and one half of the personal estate absolutely. In the event of a wife dying without leaving a will, the husband, whether there has been issue born alive or not, is entitled to a life estate in the wife's real property and to all of her personal property absolutely. If there is neither issue nor kindred and no will, a surviving husband or wife takes all of the estate.

RHODE ISLAND

The rights of dower and of curtesy both obtain in this State. A widow is entitled to a one-third portion of the real estate, and also to one third of the personal estate if there is no issue living. In the event of there being no descendants and no paternal or maternal kindred, and a husband or wife dies intestate, the whole of the estate goes to the survivor. If there is no issue surviving, a

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widow is entitled to one half of the personal estate, and a husband is entitled to all of his wife's personal estate if she dies intestate.

SOUTH CAROLINA

In this State the right of dower obtains, but not that of curtesy. If either a husband or a wife dies intestate, the other has an equal claim on the property. If there are one or more children, the survivor is entitled to one third of the real estate and of the personal estate. In the event of there being no lineal descendants, but collateral heirs, the survivor is entitled to one half of the entire estate. If there are no lineal descendants or father, mother, brother, sister, or child of such brother or sister, or brother or sister of the half-blood or lineal ancestor, the survivor is entitled to receive two thirds of the estate, while the remaining third goes to the next of kin. If there are none of these persons or any kin, the survivor is entitled to the whole of the estate.

SOUTH DAKOTA

Neither the right of dower nor of curtesy obtains in this State. If either a husband or a wife dies without leaving a will, and leaving only one child or the lawful issue of one

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child, the estate passes in equal shares to the surviving husband or wife and the child. In the event of there being more than one child, or one child and the lawful issue of one or more deceased children, one third of the estate goes to the surviving husband or wife. If there are no children living, one half of the estate goes to the husband or wife, unless there is neither father, mother, brother, nor sister of the decedent living, in which case it all passes to the survivor.

Either husband or wife is entitled to administer on the estate of the other. There may be reserved also, either for the husband or the wife, a homestead not exceeding one hundred and sixty acres in extent, or one quarter of an acre in a town.

TENNESSEE

THE rights of dower and curtesy obtain in this State. The widow of a man who dies intestate is entitled to receive one third of the real property, unless there are neither descendants nor heirs at law, in which case the widow is entitled to receive the whole estate in fee simple. The widow takes of the personal estate the share of a child, unless there are no lineal descendants, in which case she is entitled to receive it all. If a wife dies intestate, the husband is entitled to a life es-

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tate in her real property if there has been issue born alive, and to the whole of her personal estate.

TEXAS

NEITHER the right of dower nor of curtesy obtains in this State. If there are any lineal descendants living, a surviving husband or wife is entitled to a life interest in one third of the real estate and to one third of the personal estate. If there are no lineal descendants, the survivor is entitled to one half of the real estate and to the whole of the personal estate. If there are neither father, mother, brothers, sisters, nor their descendants, the surviving husband or wife is entitled to the whole estate, both real and personal.

In addition to such provision, one half of the community property passes to the widow or widower if there are one or more children, and the whole of such property if there are no such lineal descendants living. A widow is also entitled to retain a homestead not exceeding five thousand dollars in value, and the same right is provided for a widower. If either a husband or a wife dies intestate or becomes insane, and there are no living descendants, and the other party to the marriage has no separate estate, the community property passes to the survivor without an

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administration, unless there is a guardianship by the State of the insane spouse. If, however, there are descendants, the survivor has the exclusive management of the community property, provided that he or she files an application for an appraisement within four years of the death or the establishment of the fact of the insanity.

But a woman loses the right thus to control the community property if she contracts another marriage. In the event of the insane person being restored to a sound mental condition, an accounting of such property must be rendered.

UTAH

Neither the right of dower nor of curtesy obtains in this State. If either a husband or a wife dies intestate, and there is one child or the issue of one child living, the widow or widower is entitled to receive one half of both the real and the personal property. If there is more than one child living, or one child and the issue of one or more deceased children, one third of the estate goes to the survivor. If there is no issue living, one half of the estate goes to the survivor, unless there is neither father, mother, brother, nor sister living, in which case the widow or widower is entitled to receive the whole of the estate.

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VERMONT

THE rights of dower and curtesy both obtain in this State. If there are one or more children living, a widow has an interest for her life in one third of the real estate and in one third of the personal estate. The husband has a life use of all of the real estate if there has been issue of the marriage born alive, and the same share of the personal estate that his wife would have had in his estate had she survived him. If there is no surviving issue, either the husband or the wife surviving may elect to waive the right of dower or of curtesy respectively, and in that case will be entitled to the whole of the estate absolutely if it does not exceed two thousand dollars in value. If the estate does exceed that sum, the widow or widower is entitled to receive two thousand dollars and one half of the remainder, unless there are no kindred, in which case the entire estate passes to the survivor.

Married women, by a law of November 1, 1894, are empowered to serve as executors, administrators, guardians, and trustees.

VIRGINIA

THE rights of dower and curtesy both obtain in this State. A wife is entitled to only a

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life interest in one third of the real estate, unless there are neither descendants nor paternal nor maternal kindred, in which case she is entitled to receive all of the real estate. Under like circumstances, a husband is entitled to receive all the real estate of his wife. If there is no living issue, a widow is entitled to one third of the personal estate. If there is no issue by her, a widow is entitled absolutely to so much of the personal property, after the payment of all debts and charges, as had been acquired by the intestate by virtue of his marriage with her prior to the fourth day of April, 1877, and which remains in kind at the time of his death.

A widow is also entitled, if the intestate leaves issue by a former marriage, to one third of the residue; if there are no such issue, then to one half of the residue.

A widower is entitled to receive all of the personal estate of his intestate wife, together with a use for life of her real estate if there has been issue of the marriage born alive.

WASHINGTON

THE rights of dower and curtesy have been abolished in this State. If either a husband or a wife dies intestate, leaving only one child or the lawful issue of one child, the

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widow or widower is entitled to one half of the real estate. If there is more than one child living, or one child and the lawful issue of one or more children deceased, a widow or widower takes one third of the real estate. If there is no issue living, the widow or widower is entitled to one half of the real estate, unless there is neither father, mother, brother, nor sister of the decedent living, in which case the survivor is entitled to all of the real estate.

If there is issue living, the surviving husband or wife takes one half of the personal estate, otherwise all of such estate. The survivor is entitled also to one half of the community property, subject to the community debts; and if the deceased made no disposition by testament of the other half of the community property, it passes to the survivor, unless there are children living.

WEST VIRGINIA

In this State the rights of dower and curtesy both obtain. If there are neither descendants nor kindred, the entire real property of a husband or wife dying intestate passes to the survivor. If there are children surviving, the widow or widower is entitled to one third of the personal estate, and if there are

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no children then to all of it. The right of a husband to a life use of the real estate of his wife does not depend upon their having had issue born alive.

WISCONSIN

In this State the rights of dower and curtesy both obtain. A widow is entitled to a life interest in one third of the real estate, and in the event of the husband dying intestate she is entitled to the share of a child in the personal estate. If there is no lawful issue, a widow is entitled to the entire estate, both real and personal. The husband has a life interest in the real estate of his wife that is not disposed of by the will, or in all of the estate if the wife died intestate, unless she left issue by a former husband, in which case such issue takes such property, free from the right of the surviving husband to hold the same as tenant by the curtesy. If the wife dies intestate and leaves no issue, the widower is entitled to the entire estate, both real and personal.

There may also be reserved for a widow a homestead of not more than forty acres of farm land, or one quarter of an acre in a town, which at her subsequent marriage or death passes to the heirs of the former husband.

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WYOMING

THE rights of dower and curtesy have been abolished in this State. If either a husband or a wife dies intestate, leaving a descendant, one half of the estate, both real and personal, goes to the survivor. If there are no descendants, three fourths of the estate goes to the survivor, unless the estate, both real and personal, does not exceed ten thousand dollars, in which case it all passes to the survivor.

If all of the community property does not exceed fifteen hundred dollars in value, the whole may be assigned to the widow and children, or to the children if there is no widow. But if a widow has a maintenance derived from her own property equal to the portion provided for her by these provisions, then the whole property so provided, other than the homestead, passes to the minor children.

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THE CONTRACTS OF MARRIED WOMEN

THE capacity that married women enjoy at the present time in the United States of entering into contractual relations is due to a development in the principles of equity, and also to the series of statutes that have come to be generally known as the married women's acts.

As it is of the essence of a contract that there shall be at least two parties capable of giving their consent, and as at the common law husband and wife are one person, we see the chief reason why contracts between husband and wife are invalid, and as under that system of law the wife is regarded as having no will of her own, but as being under the power and control of her husband, we see also the chief reason why the contracts of married women with third parties are also invalid at the common law. But in equity the legal fiction of the unity of husband and wife has never been adopted, and, indeed, the trend of development has been in quite the other direction, realizing a greater individuality for married women. For many years

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legislation in the form of statutes has also been at work breaking down the common-law unity of husband and wife, and giving to married women a large capacity to become a party to contracts. But the common-law rule that all the contracts, agreements, covenants, promises, and representations of married women are null and void, although for the greater part done away with by the developments of equity and by statutes, still exist to the extent that any capacity of a married woman to contract is regarded as exceptional, and must be asserted and proved.

There were certain circumstances under which at the common law married women had the capacities of unmarried women, and could therefore contract. Such was the case when the husband was an alien residing abroad, or when he had been exiled, or had abjured the realm, or was civilly dead. So in the United States it is a general rule that a permanent departure from the State and a renunciation of his married rights by a husband vests his wife with the capacities of feme sole.

While the present capacity of married women depends largely upon statutes, it is very generally admitted that the various acts providing for the separate estate of a married woman do not enable her to make personal contracts. There are, however, three of

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her contracts that are recognized as binding on her statutory separate property: first, contracts which would bind her equitable separate property; second, contracts which are expressly authorized by the statute, as when a statute empowers her to make contracts "relating to" or "with reference to" her property; third, contracts which are impliedly authorized by statute—that is, contracts which are necessary for the possession and enjoyment of her property which it is intended under the statute she should have.

We have seen how, according to the common law, contracts between husband and wife are void for want of parties and the wife's power to consent. In equity, however, the dual personality of husband and wife is recognized, so also the capacity of married women to hold, convey, and charge by contract property which is regarded as their equitable separate property. The courts of equity will enforce a wife's agreement with her husband respecting her separate property, without by so doing recognizing any personal obligation that she may attempt to assume. A contract between a married woman and her husband must of course be equitable and valid in all respects, else it is void. The statutes of the several States in regard to this matter are confusing. Some of these statutes expressly prohibit

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all contracts or some contracts between husband and wife, while others expressly authorize them. The married women's acts, which do not refer to contracts between husband and wife, but give a married woman the capacity to contract with the assent or joinder of her husband, do not, as a rule, enable her to contract with him, as the requirement of the joinder of the husband is presumed to exclude the idea of an intention to include contracts with himself. Such of the statutes as do not specifically refer to husband and wife, but which give to married women the right to contract generally, have given rise to much controversy. In some cases, based on these statutes, the decisions hold that such statutes do not destroy the unity of husband and wife, but simply remove the disabilities of married women, and that, therefore, the disability of the husband and wife to contract because of their unity is not removed. On the other hand, the decisions in some cases give such statutes full effect, holding that they enable husband and wife to contract.

The States of Minnesota, North Carolina, Nevada, Colorado, and the Territory of New Mexico have specifically enacted that all contracts between husband and wife are valid. But Minnesota and New Mexico have also provided that in all cases where the rights of

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creditors or purchasers in good faith come in question, the husband is held to have notice of the contracts and debts of his wife, and, vice versa, the wife of the husband's.

By the law of the State of Louisiana, a contract of sale between husband and wife can be made in three cases only: first, when one of the spouses makes a transfer of property to the other, who is judicially separated from him or her, in payment of his or her rights; second, when a transfer made by a husband to his wife, even though they are living together, has a legitimate cause, as, for example, the replacing of her dotal or other effects that had been alienated; third, when a wife makes a transfer of property to her husband in payment of a sum promised to him as a dowry.

According to the statutes of the States of Maine, Illinois, Iowa, Delaware, Oregon, Washington, and the Territory of New Mexico a married woman may constitute her husband her attorney, and also release to him the right to control her property or any part of it, and to dispose of the income for their mutual benefit, and may also in writing revoke such an agency.

By statutes which supplant the rule of the common law, a married woman may very generally, throughout the United States at the present time, enter into contracts with

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third parties, which contracts may be either oral or written, sealed or unsealed. Such statutes are found in the States of New Hampshire, Massachusetts, Vermont, New York, New Jersey, Indiana, Illinois, Iowa, Minnesota, Oregon, Colorado, Mississippi, and in the Territory of New Mexico. There are also found, however, certain limitations upon the general capacity of a married woman to contract. So, for example, a married woman in the States of New Hampshire, Vermont, and Georgia cannot be made liable as an endorser, surety, or guarantor for her husband, and in New Jersey, Indiana, and Georgia as a surety for any person, and in the State of Illinois a married woman may not enter into a partnership business without the consent of her husband, except when the husband has deserted her or is idiotic or insane, or is confined in a penitentiary. Some special cases are also provided for by statute, as in the State of Pennsylvania, where a married woman may contract for the purchase of a sewing-machine for her own use, and where she may give a refunding bond for a distributive share or legacy which will bind her estate and release the administrator as if she were a feme sole, and in Indiana, where a married woman may execute an official bond as principal. In the State of Colorado, under the statute a married woman may execute

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any bond, bill, note, or other instrument for the payment of money, and if the consideration thereof went to the benefit of her estate she is liable thereon.

While under the common law a married woman could not lease property, she may do so by statute and be liable for the rent, and if she is able to lease property, she is also liable under an implied promise for the use and occupation of the premises which she holds after the expiration of the lease, and this is true though her husband is living with her. So while under the common law a married woman was not liable for repairs to her property, yet under the statutes a contract for repairs is regarded as one that is beneficial to her estate, and one that she has implied authority to make.

In the course of the construction of statutes, some general rules have been developed relating to the contracts of married women which will be found of service in a more detailed study of this subject. They may be stated as follows:

First. The general statutes which relate to contracts, but do not expressly refer to married women, do not directly affect the validity of married women's contracts, and apply to these only so far as they may be valid under other statutes.

Second. The statutes that secure to a mar-

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ried woman the separate use and enjoyment of her property, and which either do not refer to her contracts at all or authorize contracts "relating to" or "with respect to" such property, do not enable her to contract generally, but only in connection with such property.

Third. The contracts of a married woman which would be binding on her equitable separate property in equity are valid as against her statutory separate property in the same way.

Fourth. With respect to her statutory property, a married woman is not regarded as a feme sole. She has by implication the capacity to make such contracts, and no others, as are necessary to the exercise of such capacities or to the enjoyment of the rights that are expressly given to her by statute. So, for example, when a statute reads that a married woman may "hold, enjoy, and possess her property as if sole," she may make all contracts that are necessary to such holding and enjoyment. She may contract for legal services in relation to her property, or for manual labor on it, or for the cultivation and sale of crops.

Fifth. When a statute authorizes a married woman to contract "with reference to" or "with respect to" her separate property,

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her contracts, to be valid, must come strictly within the meaning of these terms.

Sixth. A statute that expressly authorizes or prohibits certain specified contracts is strictly construed.

Seventh. Where a statute expressly enables a married woman to contract as if she were unmarried, she may make contracts generally entirely unaffected by her state of coverture, but it is doubtful whether she may make such contracts directly with her husband.

Eighth. If a statute which enables a married woman to contract requires that her contracts be executed in a certain way, all such requirements must be substantially complied with to give her contract any validity. If, however, she has the capacity to contract independently of the statute which requires the formalities, a contract by her which does not comply therewith may still be valid.

Ninth. The ability of a married woman to contract personally or as to things movable depends on the law of the place where the contract is made; to contract as to immovable things, on the law of the place where such things lie.

Tenth. The validity of a contract and the rights of the parties under it depend upon the law existing at the time the contract is made, so a statute providing that "all con-

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tracts of married women shall be valid'' does not affect contracts made prior to the enactment of the statute.

The rights of married women to execute deed of property are considered separately.

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DEEDS BY MARRIED WOMEN

IN many of the States no married woman can convey or encumber her separate real estate unless the husband join in the deed. This is the rule in the States of Vermont, Rhode Island, New Jersey, Indiana, Michigan, Minnesota, Maryland, Delaware, West Virginia, North Carolina, Kentucky, Missouri, Texas, Washington, Florida, Louisiana, and in the Territory of New Mexico. In Maine a married woman cannot convey real estate that has been directly or indirectly conveyed to her by her husband, or paid for by him, or given or devised to her by his relatives, without his joinder in the deed, except real property conveyed to her as security or in payment of a bona-fide debt actually due to her from the husband. In Minnesota exceptions are made of mortgages to secure the purchase money, and of leases not exceeding three years in duration.

In a number of States no separate property of the wife, either real or personal, can be sold, conveyed, transferred, or encumbered by the husband without the consent of the wife. This is the rule in the States of

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Vermont, Rhode Island, Connecticut (as to real estate only), New Jersey, Pennsylvania, Ohio, Indiana, Virginia, West Virginia, Tennessee, Missouri, Texas, Nevada, Colorado, Washington, Idaho, Wyoming, Florida, and in the Territory of Arizona. In Pennsylvania such consent of a wife to join in a deed must be evidenced by writing, duly acknowledged by her before a judge, and also by joinder in the deed itself.

In a number of the States any married woman of full age may join with her husband in conveying any of her real or personal estate, as in the States of New Hampshire, Vermont, Rhode Island, Connecticut, Pennsylvania, Ohio, Indiana (real estate only), Illinois, Iowa (real estate only), Minnesota, Maryland, Delaware, Virginia, West Virginia, North Carolina (real estate only), Kentucky, Tennessee, Missouri, Arkansas, Texas, Oregon, Nevada, Idaho, Georgia, Alabama, Florida, the District of Columbia, and in the Territories of Arizona and New Mexico. In Rhode Island and Nevada the husband and wife may convey any real estate of the wife by deeds, signed, sealed, and acknowledged by each of them separately and delivered. In other States the wife may execute and acknowledge all deeds, mortgages of her separate estate, bills of sale, or other conveyances without the joinder of the husband as re-

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quired above, except, probably in all States, as to the husband's curtesy or other rights. Such is the rule in the States of Maine, Massachusetts, New York, Wisconsin, Iowa, Kansas, Nebraska, Tennessee, Arkansas, Colorado, Washington, Wyoming, the Dakotas, Utah, South Carolina, Mississippi, and the Territory of Arizona.

In most of the States a wife executes a deed, when the husband joins, in the same manner and subject to the same rules as in other cases of deeds by joint grantors. But in other States the wife must acknowledge the deed and her consent be provided for by a separate examination or other formality. Such is the rule in the States of Rhode Island, New Jersey, Pennsylvania, Ohio, Delaware, Virginia, West Virginia, North Carolina, Kentucky, Tennessee, Texas, California, Oregon, Nevada, Washington, Idaho, Montana, Georgia, Florida, Louisiana, the District of Columbia, and the Territory of New Mexico. In Rhode Island any personal property other than chattels real, household furniture, plate, jewels, stock or shares, money in a bank or secured by a mortgage, may be sold or conveyed by a married woman as if sole, and she may make such contracts of sale accordingly. But this law does not authorize her to transact business as a sole trader. In Connecticut no sale or transfer of a wife's personalty or

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any interest therein is valid unless the wife or, if she is dead, those in whom her estate has vested or their guardians join in a written conveyance thereof, and all reinvestments shall be in the name of the husband as trustee. The codes of California and the Dakotas provide that "the wife may, without consent of her husband, convey her separate property." By the law of Louisiana a married woman cannot make a donation *inter vivos* without the special consent or concurrence of her husband or unless authorized by the court. By the laws of Michigan, Oregon, and Wyoming a joint deed of land in the State by a wife non-resident with her husband has the same effect and may be acknowledged or proved as if she were sole. The law of Iowa reads: "Every conveyance made by a husband and wife shall be deemed sufficient to pass any and all right of either in the property conveyed, unless the contrary appear in the conveyance."

In many States a wife must be separately examined apart from her husband as to all conveyances of real estate in which she joins. Thus, "she must be examined privily (apart from her husband) and declare that the instrument is her voluntary act, and that she does not wish to retract it." So it is provided in the States of Rhode Island, Ohio, Virginia, West Virginia, Texas, California,

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Nevada, Idaho, Montana, and the District of Columbia. In other States the form of acknowledgment, so far as it expresses the wife's examination, is as follows: "And the said Mary Smith, being at the same time privately examined by me apart from her husband, acknowledged that she executed the said indenture willingly, without compulsion or threat, or fear of her husband's displeasure." In the States of Tennessee, Arkansas, Oregon, Washington, and Georgia it is sufficient that she acknowledge before the officer, and without private examination, that she joined of her own free will and consent, without any compulsion or force used by her husband. In Pennsylvania and Ohio the officer must examine the wife separately, read the full contents of the conveyance to her, and she must declare that she executed it voluntarily and without coercion. In New Jersey, North Carolina, Kentucky, Texas, Idaho, and Louisiana a conveyance must be acknowledged by a wife, apart from her husband. Statutory forms of the certificate of acknowledgment are provided in several of the States.

In two States, Maryland and Florida, the husband and wife must join in all sales, transfers, and conveyances of the wife's personal property. Any married woman may release her dower by joinder in the

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deed with her husband in the States of New Hampshire, Rhode Island, New Jersey, Pennsylvania, Ohio, Illinois, Wisconsin, Maryland, Virginia, West Virginia, Kentucky, Missouri, Arkansas, Washington, South Carolina, Georgia, Florida, and Louisiana. By the law of the State of New York, where a husband and wife hold land as tenants, joint or in common, "by entireties," as it is called, they may make valid partition among themselves which will bar dower if so expressed in the instrument. Generally, if the husband and wife are both living, both must join in a deed in order to release a homestead interest belonging to either. In a few States any married woman aged twenty-one years may execute and deliver her power of attorney to convey land as if sole, and this is the law in New York, Wisconsin, and Delaware. In most of the States a wife may convey her land by power of attorney, only it must be executed and acknowledged like a deed. By the Louisiana law, a married woman having a mortgage or privilege on the property of her husband may appoint one or more agents with power in her behalf, during her temporary or permanent absence from the State, to intervene in any contract of mortgage or sale made by the husband, and sign in her behalf such remuneration of said mortgage or privilege as the wife herself might do

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if personally present, and such power may be either general or special, and may be executed in the United States before any judge, and in foreign countries before any consul, vice-consul, or consular or commercial agent of the United States. Every general authority, even though stipulated for in the marriage contract, is void, except so far as it respects the administration of the property of the wife.

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WILLS BY MARRIED WOMEN

IN nearly all of the States it is expressly enacted that a married woman of full age and sound mind may devise her separate real or personal property by an ordinary will, without the husband's consent, as if sole. Where this is not expressly declared to be the law, it is generally implied if there is no provision to the contrary. There are, however, certain restrictions found in the statutes. Such a will may not, without his written consent or joinder in the will, impair the rights of the husband (1) to curtesy in New Hampshire, Massachusetts, Rhode Island, New Jersey, Pennsylvania, Maryland, Delaware, North Carolina, Tennessee, Missouri, and Oregon; (2) to the use of one half of her real estate for life, if they had no issue born alive, in Massachusetts; (3) to one half of her personal property in Massachusetts and Kansas; (4) to his distributive share, as if she died intestate, in New Hampshire, New Jersey, Pennsylvania, and Maryland; (5) to his right to administer her personalty without account not so bequeathed in Rhode Island; (6) so the wife may not

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by a will devise more than one half of her property, real or personal, away from her husband in Kansas and Colorado; (7) the husband must consent and subscribe the will in all cases in Maryland, and also in this State the wife must be privately examined, and the will must be made sixty days before her death. In Pennsylvania a husband may not be a witness to such a will.

In the States of Pennsylvania, North Carolina, South Carolina, Georgia, and Kentucky a married woman may make a will where an express power to will her separate estate is reserved or granted to her in the instrument creating the same or by marriage contract.

In Massachusetts a married woman, deserted by or living apart from her husband for a justifiable cause, when the proper court has entered a decree establishing such fact, may make a will in the same manner and to the same effect as if sole, and by such a will or by a deed executed without her husband's consent dispose of all her estate, both real and personal. In the States of Wisconsin and Maryland a married woman aged eighteen years may make a will, although not of age until twenty-one years.

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MARRIED WOMEN AS SOLE TRADERS

THERE is in many of the States a certain process by which a married woman can become a sole trader, as it is called, and carry on a business entirely apart from her husband. She is then called a sole trader in the States of Pennsylvania, California, Idaho, and Montana, a free trader in North Carolina and Georgia, a free dealer in Florida, and a public merchant in Louisiana.

In several of the States some of these privileges are extended to her without formalities of any kind. Thus, a woman may carry on any business or trade or perform any labor or services in her sole and separate account, and her earnings shall be her sole and separate property, and may be used and invested by her in her own name, by the laws of New York, Indiana, Kansas, Nebraska, Virginia, West Virginia, Arkansas, Colorado, and Wyoming. The law in Vermont provides that if a woman does business in her own name, her earnings, goods, and credits may be attached on trustee process or otherwise, and execution levied on her separate goods;

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and the statutes of Rhode Island have a provision that when a husband has been insane for a period of one year the wife may be authorized to do business on her separate account. In North Carolina every wife living apart from her husband either under a judgment of divorce, absolute or limited, or under a deed of separation executed by the husband and wife and recorded in the county where she is resident, or when her husband has become an idiot or a lunatic, is a free trader. So, also, in North Carolina every woman whose husband abandons her or maliciously turns her out of doors is a free trader, so far as to be competent to control and bind her separate property, but the liability of the husband for her reasonable support is not thereby impaired. By the law of Connecticut, when a married man is sentenced to and is confined in the penitentiary, his wife, during the period of his confinement, may carry on business as a feme sole, and may sue and be sued accordingly. By the law of Louisiana, if a wife is a public merchant she may, without receiving authority from her husband, obligate herself in anything relating to her trade, and in such case her husband is bound also, if there exists a community of property between them. The wife is considered to be a public merchant if she carries on a separate trade,

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but not if she retails only the merchandise belonging to the commerce carried on by her husband.

When a married woman desires to do business on her separate account she is to record in the clerk's office of the city or town (or, in North Carolina, Montana, and Arizona, in the registry of deeds) a certificate setting forth the names of herself and her husband in Massachusetts, North Carolina, and Montana, and the nature and place of the business in Massachusetts, Montana, and Arizona. In Massachusetts the husband may receive such a certificate if the wife does not. In North Carolina no woman can become a free trader unless twenty-one years of age, and the husband must consent to and sign the certificate. By the laws of Montana and Arizona no married woman can become a sole trader when the capital originally invested in her business exceeds the sum of ten thousand dollars, unless her declaration contain her oath that the surplus in excess of ten thousand dollars did not come from any funds of the husband. In most of the States it is only by petition to the court that a married woman may obtain the certificate of a sole trader.

In a few of the States not every married woman has the legal privilege of becoming a sole trader. Thus, in Pennsylvania a mar-

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ried woman can secure the privilege only when her husband is absent at sea. In California a married woman has this right only when her husband fails to support her or when there is ground for a suit for divorce.

When a married woman has complied with the legal procedure to qualify as a sole trader the husband is not liable on her contracts, and it is thus expressly stated in the laws of Massachusetts, New York, Pennsylvania, Indiana, Kentucky, Arkansas, California, Nevada, Idaho, Montana, and Arizona. In California a married woman as a sole trader is responsible for the maintenance of her children.

In North Carolina it is provided that a married woman's rights as a sole trader may be terminated by an entry on the margin of the record or by a publication for a period of three weeks; but such a cessation of her operations as a free trader will not impair the liabilities that she has already incurred or relieve her from the effects of subsequent fraud on her part.

In connection with the sole trade of a married woman, it is to be noted that the term "earnings" means what is earned or gained by labor, services or performances, wages or reward; and the earnings secured to a married woman by a statute are not confined to the results of her manual labor, such as

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wages for washing or sewing, but include the products of her trade also, if such trade is carried on with her separate property used as capital; and the stock in trade of a married woman owned at the time of her marriage, or afterward bought with her earnings, is included in the term "earnings."

The phrase "trade and business" means an employment to the carrying on of which the woman devotes a considerable portion of her time, skill, and means. It is a business that is continuing in its nature, and embraces a series of transactions; engaging in trade and business means not only trading in a commercial sense, but also being engaged in the employments which require time, attention, and labor. So a married woman's receipt and disbursement of her rents and profits, though done in a business way, does not constitute her a trader. Nor is she regarded as a trader when she is not acting generally with the public, but is simply taking care of her own property or collecting or investing her income.

When a married woman is recognized as a sole trader she is not confined to any particular trade. She may engage not only in washing, sewing, dressmaking, millinery, in operating a dairy, a boarding-house, a grocery or provision store, and in other pursuits specially adapted to her sex, but she may be a

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farmer, a miller, an army sutler, a saloon- or tavern-keeper, a clothier, a dealer in metal junk, she may work a mine or quarry, or carry on a lumber business. If, however, her trade is unsuited to her, this is a fact to be considered if her husband's creditors are trying to show that her business is really his. A married woman as a sole trader may engage in the professions, she may devote herself to literature, acting, singing, and, in fact, under a general power to trade, she may follow any legitimate calling.

The trade of a married woman is often spoken of as her "separate trade," but the word "separate" used in such a connection refers now rather to her legal status than to the mode in which she trades, and it does not mean that she is to trade alone, or that she shall not live with her husband while carrying on her trade, and it does not prevent her from allowing him to join in the business. In the States of Massachusetts and Indiana it has been decided, however, that a sole trader must keep her business separate from her husband, and that their joint earnings are his property.

In those States where a married woman is a feme sole as to her separate estate in equity, she may use such an estate in trade, and the profits of such trade are equitable separate property also; but in such trade she

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has no personal capacity, for equity recognizes her separate existence only with respect to her property, and her contracts, made in the cause of her trade, can be collected only if they have been property charged on such property. A husband cannot by his own motion change the personal status of his wife to enable her to trade with the rights and liabilities of a feme sole. He may, however, allow her, as his agent, to engage in business and give her the profits, or he may arrange before or after marriage that she shall keep her earnings or carry on business for her own use, and give her, if he choose, the necessary capital to start with. While any such gift by a husband to his wife of earnings, profit, or property is good against himself and his heirs, it is not good against his creditors, unless made for a valuable consideration. If the consent of the husband to the business conducted by his wife is a mere oral assent, and without consideration, although he cannot ask back profits that have been already made and collected by her, he can revoke his consent and claim the business as his own. In all cases where the wife carries on a business by the mere assent of the husband, the business is his, and he is liable for its debts and may claim its profits. Whether a business is the husband's or the wife's is a question of fact. If a wife has

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engaged in business without the authority of law, and without her husband's assent, he cannot be held liable for its debts, nor can she in her mere personal contracts. If all the credit is given to her, her husband is not liable, whether she or her property is liable or not.

The various statutes that have been passed with reference to the separate property of married women do not by implication destroy the right of the husband at common law to the earnings of his wife, but they do, as a rule, expressly or by implication, secure to the wife the natural increase of her property, and since such increase belongs to her, even when largely due to the efforts of her husband, it would seem reasonable that her own services, though these belong to her husband, should not injuriously affect her rights.

Under a statute which enables a married woman to trade with a capital of one thousand dollars or less, and creates a special remedy against her property for her trade debts, it has been decided that she has no powers that are not expressly given, and that the naming of one mode of trade is a denial of all other modes. Under statutes which enable a married woman to trade, and which do not limit her capacities, she may trade precisely as if she were unmarried, and may do all things that are usual and proper in the particular trade in which she is engaged.

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It has been said that the object of these statutes is not only to do justice to wives, but also to encourage trade.

The business creditors of a married woman have, under the statutes generally, the same rights as if she were sole—they may sue her alone and obtain a general judgment against her. If she is a partner, all the partners must be joined.

At common law, when a man married a woman engaged in trade he took the business, with its assets and liabilities; but at the present time, under the various statutes, he is liable only where he is still liable for her antenuptial debts, and has a right to the business only when such property is not secured to the wife by settlement or by statute.

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WOMEN AND THE HOMESTEAD LAWS

AS the homestead laws of the American States have been enacted with the avowed object of protecting the family, they are a matter of interest to women.

A homestead is the house and land that constitute a family residence, and in the eyes of the law it is such a family residence exempt from enforced sale. The extent of the exemption from forced sale varies in the different States under their statutory law, but as a legal term "homestead" implies some degree of exemption in all of the States.

Sixteen States have by their constitutions made provision for the homestead exemption; such States are Illinois, Michigan, Kansas, Virginia, West Virginia, North Carolina, Tennessee, Arkansas, Texas, California, Nevada, Colorado, South Carolina, Georgia, Alabama, and Florida. In the constitutions of the States of Illinois and Colorado there are provisions that the legislature shall pass liberal homestead laws.

In South Carolina it is provided that a reasonable amount of property, as a home-

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stead, shall be exempt from seizure or sale for debts. In Michigan the constitution provides that every homestead, if not exceeding forty acres of land and the dwelling-house thereon, and the appurtenances to be selected by the owner thereof, and not included in any town; or instead thereof, at the option of the owner, any lot in any city, village, or recorded town plot, or such parts of lots as shall be equal thereto, and the dwelling-house thereon and its appurtenances, owned and occupied by any resident of the State, not exceeding in value fifteen hundred dollars, shall be exempt from sale under legal process. The constitution of the State of Kansas provides that a homestead to the extent of one hundred and sixty acres of farming land, or one acre in a town or city, occupied as a residence by the family of the owner, with all improvements, shall be so exempt. In North Carolina it is provided that every homestead and its buildings, owned and occupied by a resident of the State, not exceeding one thousand dollars in value, shall be so exempt; and in Virginia that every householder or head of a family shall be entitled, in addition, to the articles exempt by law from levy or distress for rent, to hold exempt his real or personal property to the value of two thousand dollars, to be selected by him.

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In the States of Tennessee, West Virginia, and South Carolina a homestead, in the possession of each head of a family, and, in the town, to the value in all of one thousand dollars, is exempt. In Alabama every homestead not exceeding eighty acres in extent, with improvements to be selected by the owner, or, in a town, any lot with improvements, not in all exceeding two thousand dollars in value, owned and occupied by a resident, is exempt. In Georgia there is exemption from levy and sale of the property of every head of a family, or guardian or trustee of a family of minor children, or any aged or infirm person or persons having the care or support of dependent females of any age, who is not the head of a family, real property or personal property, or both, to the aggregate value of sixteen hundred dollars. In Florida a homestead to the extent of one hundred and sixty acres of land, or half an acre in a town, and the improvements thereon, owned by a head of a family residing in the State, is exempt.

In Louisiana every head of a family, or person having a mother or father or person or persons dependent on him for support, has exempt the homestead bona fide owned by the debtor and occupied by him, consisting of lands, buildings, and appurtenances, whether rural or urban; also one

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work-horse, one wagon, one yoke of oxen, two cows and calves, twenty-five head of hogs, or one thousand pounds of bacon or its equivalent in pork, and, in a farm, the necessary corn and fodder for a year, and farming implements to the value of two thousand dollars; if the homestead exceeds two thousand dollars in value, the beneficiary is entitled to that amount in case a sale of the homestead under legal process realizes more than that sum; but no husband is entitled to a homestead whose wife is in the actual enjoyment of property to the value of two thousand dollars.

By the constitutions of Michigan, Virginia, Nevada, and Alabama, a homestead exemption does not avail as against any mortgage or pledge that is lawfully obtained. Nor, as a general rule, does a homestead exemption avail against any obligation or debt contracted for the purchase of the property, nor against a sale for taxes.

In the States of Michigan, Kansas, North Carolina, Tennessee, Texas, Nevada, Alabama, and Florida a homestead cannot be alienated or mortgaged without the joint consent of husband and wife.

In the seven States of Michigan, North Carolina, Tennessee, Arkansas, West Virginia, Alabama, and Louisiana by constitution the homestead estate continues exempt from the

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owner's debts after his death during the minority of any of his children. So it would seem to be implied in Texas, where the constitution provides "that in the death of the husband, wife, or both, the homestead descends and rests like other real property of the deceased, and shall be governed by the same laws of descent and distribution, but shall not be partitioned among the heirs of the deceased during the lifetime of the husband or widow or as long as he or she occupy or use the same as a homestead, or the guardian of a minor child be permitted so to do by order of court."

The States of Michigan and North Carolina provide by constitution that the homestead exemption continues during the life and widowhood of the widow, unless she be the owner of a homestead in her own right. The States of Tennessee, Alabama, and Louisiana provide in general terms that the homestead shall inure to the benefit of the widow. So in Arkansas, during her natural life (whether she marry or not), unless she be the owner of a homestead in her own right. It is declared in Vermont that a mechanic's lien may attach to property held as a homestead; but in Texas, in such a case, to fix a lien there must be a written contract, signed by husband and wife and acknowledged by her, as in the case of the sale of a homestead.

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In case of a divorce in the Dakotas, the court rendering the decree may assign the homestead to the innocent party, either absolutely or for a limited period, according to the facts of the case. In California, in such a case, if a homestead has been selected from the community property it may be assigned to the innocent party, either absolutely or for a limited period, or it may be divided, or sold and the proceeds divided. If it has been selected from the separate property of either party, it shall be assigned to the former owner of such property, subject, nevertheless, to the power of the court to assign it for a limited period to the innocent party. In Virginia, if the wife obtains the decree of divorce for fault of the husband, the homestead is decreed to her and the minor children as if the former husband was dead.

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Part III

PUBLIC RELATIONS

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CITIZEN WOMEN

A CITIZEN woman is either a native born or a naturalized member of the State who is entitled to full protection in the exercise and enjoyment of private rights. Any woman born in the United States, or one born out of the same who has been naturalized, who has not lost her right as such, is a citizen. Natural citizenship is created by birth within the jurisdiction of the United States. An Act of Congress of February 10, 1885, provides that if any woman who might be lawfully naturalized under the existing laws should marry or should be married to a citizen of the United States, she shall be deemed and taken to be a citizen. This act is construed liberally to mean that the husband need not be a citizen at the time of the marriage, but that any free woman already married to an alien becomes a citizen by the naturalization of her husband. Indian women, born members of any of the Indian tribes within the United States which still maintain their tribal relations, are not citizens. They are not citizens even if they have

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separated themselves from their tribe and reside among the white citizens of the State but have not been naturalized or taxed or recognized as citizens by the United States or by any of the States.

The Congress has the exclusive power to establish uniform rules of naturalization. It is competent, however, for the Congress, after establishing uniform rules, to give to the State courts jurisdiction under them. The provisions of the United States statutes as applied to women are that any alien, except Chinese, may be naturalized and become a citizen of the United States on the following conditions:

First. The applicant shall declare by oath or affirmation before some State court of record, or before a United States district or circuit court, or before a clerk of any such court, two years at least before her admission, that it is her intention to become a citizen of the United States, and to renounce forever her allegiance to her own sovereignty, which must be at peace with the United States at the time.

Second. At her final admission to citizenship she shall declare on oath or affirmation before one of the courts mentioned that she will support the Constitution of the United States, and that she renounces all allegiance to any foreign sovereign, and especially to

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her own, whereof she was a subject before her application for citizenship.

Third. She must prove by at least two witnesses, who are citizens, that she has resided within the United States for a period of five years at least, and within the State or Territory where the court is located for at least one year; that during that time she has been a good moral person, attached to the principles of this government, and is well disposed in this regard.

Fourth. She must also renounce all titles to nobility, if she has any.

Fifth. Any alien woman, except a Chinese, who is a minor and who shall have resided within the United States three years next preceding her arriving at her majority, and who shall continue to reside therein to the time of making application for citizenship, may, after reaching her majority, and having resided in the United States at least five years, including the three years of her minority, be given citizenship without any preliminary declaration.

Sixth. The children of parents duly naturalized, being under the age of twenty-one years at the time of such naturalization, shall, if residing in the United States, be considered as citizens.

Seventh. No alien woman who shall be a citizen or subject of any country, state, or

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sovereign with whom the United States shall be at war at the time of her application shall be then admitted to be a citizen of the United States.

A woman born within the dominion and jurisdiction of the United States of Chinese parents is a citizen, but no alien Chinese woman can become a naturalized citizen of the United States.

If the several States of the Union see fit to exercise the power of naturalization as an original power, they must comply with the rules laid down by Congress. No State can make or enforce any law which abridges the privileges or immunities of citizens of the United States.

Every woman citizen of the United States is capable of acquiring and holding title to land by purchase, provided that she is under no disability so that she cannot contract, and all citizens may take by descent or devise. An alien, man or woman, cannot under the common-law rule acquire title to real property by descent or by other mere operation of law. But this common-law rule as to aliens has been greatly modified or abolished by several States.

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ALIEN WOMEN

THE following is a summary of the various statutes as to an alien taking by purchase or descent and passing on by inheritance as a native citizen:

ALABAMA.—A resident alien is placed on the same footing as a citizen.

ARKANSAS.—Resident aliens have been given the same rights as to real property as citizens.

CALIFORNIA.—All the restrictions have been removed, except that an alien, man or woman, must make his claim of property within five years of the accrue of his title.

COLORADO.—Aliens have been given the same rights as citizens as to real property.

CONNECTICUT.—Resident aliens are given the same property rights as citizens.

THE DAKOTAS.—There are no restrictions as to property rights.

DELAWARE.—There are no restrictions as to resident aliens who have made the preliminary declaration of intention.

DISTRICT OF COLUMBIA.—An alien may inherit from a natural citizen such lands as

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she has acquired by deed or will before naturalization.

FLORIDA.—No property restrictions are imposed upon aliens.

GEORGIA.—Aliens, except alien enemies, have all the rights of citizens as to real property.

ILLINOIS.—There are no property restrictions, aliens being placed on an equal footing with citizens.

INDIANA.—An alien can acquire title to land by descent or devise. If a non-resident, she can hold land acquired by descent five years after the settlement of the inheritable estate.

IOWA.—Aliens may acquire, inherit, hold, and dispose of real or personal property, and all distinctions between aliens and citizens in this respect are abolished.

KANSAS.—Aliens have the same property rights as citizens.

KENTUCKY.—Aliens who are not enemies, after the preliminary oath of citizenship, hold property as citizens do.

LOUISIANA.—There is no law forbidding aliens holding and transmitting real estate.

MAINE.—No restrictions.

MARYLAND.—No restrictions, except to alien enemies.

MASSACHUSETTS.—Aliens may take, hold, and transmit real estate as citizens.

MICHIGAN.—Aliens have the same rights to realty as citizens.

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MINNESOTA.—An alien has the same rights as a citizen to real property.

MISSISSIPPI.—There are no restrictions upon aliens.

MISSOURI.—There are no restrictions upon aliens.

MONTANA.—There is no law on the subject.

NEBRASKA.—There is no distinction between aliens and citizens.

NEVADA.—There are no restrictions, except as to the Chinese.

NEW HAMPSHIRE.—There are no restrictions as to resident aliens.

NEW JERSEY.—No restrictions upon alien friends.

NEW MEXICO.—There are no restrictions.

NEW YORK.—By a law of 1896 (Chapter 547) an alien may, after filing in the office of the Secretary of State a deposition of his intention of becoming a citizen of the United States for a term of six years, take, hold, convey, and devise real property. If he dies within the six years, and before he is admitted to citizenship, his widow is entitled to dower in his real property. The right, title, or interest in or to real property of any person cannot be questioned or impeached by reason of the alienage of any person through whom such title may have been derived.

NORTH CAROLINA.—There are no restrictions upon aliens.

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OHIO.—An alien can inherit and transmit as a citizen.

OREGON.—No restrictions are imposed.

PENNSYLVANIA.—Aliens, except enemies, may purchase land not exceeding five thousand acres, nor in net annual income twenty thousand dollars, the same as citizens. Aliens may take and hold, without limit, real property acquired by devise or descent. Titles that were derived through aliens prior to April 26, 1869, were confirmed by an act of that date.

RHODE ISLAND.—There are no restrictions as to aliens holding real property.

SOUTH CAROLINA.—There is no restriction between citizens and aliens as to the purchase, enjoyment, or descent of property.

TENNESSEE.—Aliens have the same rights as citizens.

TEXAS.—Aliens may take and hold real or personal property by devise or descent in the same manner in which citizens of the United States may take and hold real or personal property by devise or descent within the country of such aliens.

UTAH.—Aliens who are residents take by descent and inherit as citizens. An alien who is a non-resident must claim an inheritance in the estate of the deceased within five years after the death of the person from whom she claims succession.

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VERMONT.—There are no restrictions upon aliens holding real property, nor any law for the forfeiture of alien estates.

VIRGINIA.—Aliens, except enemies, have the same property rights as citizens.

WASHINGTON.—All aliens, except Chinese, have the same property rights as citizens.

WEST VIRGINIA.—Aliens, except enemies, have the same property rights as citizens.

WISCONSIN.—No restrictions upon aliens as to property rights.

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WOMAN SUFFRAGE

AT the present time the full or partial suffrage is extended to women in twenty-six of the States of the Union and in two of the Territories. These States are Colorado, Connecticut, Delaware, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, South Dakota, Utah, Vermont, Wisconsin, and Wyoming. The two Territories are Arizona and Oklahoma.

In four of these States—Colorado, Idaho, Utah, and Wyoming—the suffrage is complete, women being able to vote for all public offices and upon all public questions upon which men may vote, and the qualifications are the same for women as for men.

By far the most common of all the combinations of partial suffrage is that which pertains to the election of public-school officials. The "school suffrage," as it is called, is now given to women in all of the States mentioned, with the exception of the State of Mississippi, to a greater or less extent. In

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all of the States and Territories mentioned, with the exception of Mississippi, women may vote for school trustees or directors whenever such officers are elective. There are, however, some qualifications. In Arizona a woman, to be entitled so to vote, must pay taxes or be the mother or guardian of children of school age. In the States of Connecticut and Massachusetts there is the same educational qualifications for women as for men. In the States of Delaware, Oregon, and Vermont there is a property qualification. In the State of Kentucky women with children of school age may vote for school trustees, and widows and spinsters who pay taxes may vote on school taxes in the country districts. In the three second-class cities of the State women can hold school offices and vote on the same terms as men. In the States of Minnesota, New York, and North Dakota women may vote for the county superintendent of schools, with the same qualifications as men. In the State of North Dakota women may vote for the State superintendent of schools.

In the States of Colorado, Idaho, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Nebraska, New Jersey, North Dakota, Utah, Vermont, and Wyoming women may vote on the question of the issue of school bonds or other forms of school appropriations.

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In the States of Colorado, Idaho, Kansas, Utah, and Wyoming, in municipal elections, for city officers, bonds, public improvements, etc., women may vote. Women may vote also in the States of Louisiana and Montana on all questions of public improvements that are submitted to taxpayers.

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WOMEN AS ATTORNEYS

AT the common law, or under the Constitution of the United States, a woman has no right to practise law, and, except in those jurisdictions where special statutory provisions have been made rendering her eligible, she cannot be admitted to the bar as an attorney. Chief-Justice Gray of Massachusetts said in reference to this matter: "The word 'citizen,' when used in its most common and comprehensive sense, doubtless includes women, but a woman is not by virtue of her citizenship vested by the Constitution of the United States or by the constitution of the commonwealth with any absolute right independent of legislation to take part in the government, either as a voter or as an officer, or to be admitted to practice as an attorney."

The legislature of a State has the power to provide for the admission of women to the bar of the State, but until it makes such a provision the rule of the common law will prevail. The denial by a State court of the right to practise law is not an infringement of any right guaranteed to women by the Federal Constitution or by the fourteenth amend-

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ment. So it was decided in Maryland, where the statute provides that applications for admission to practice may be made "for any free, white male citizen of Maryland above the age of twenty-one years." The statutes authorizing the admission of attorneys generally provide that any "person" or "citizen" having certain prescribed qualifications may be admitted on application. The words "person" and "citizen" so used do not include women, even though there may be a general provision in the statute law that words importing the masculine gender shall be construed to include the feminine.

In several of the States the rule in this matter is contrary to the general doctrine, and women are held to be admissible to practice as attorneys without showing any specific legislative grant of authority. So in Colorado, where the application of a woman for admission to the bar was granted, although the constitution of Colorado provided that "no person except a qualified elector shall be elected or appointed to any civil office in the State." The Connecticut statute provided that "the Superior Court may admit and cause to be sworn as attorneys such persons as are qualified therefor, agreeably to the rules established by the judges of the said court." The court held that this language was broad enough to authorize the ad-

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mission of women, and allowed the application of a petitioner who was a woman. So in Indiana the courts have held women to be admissible to practice as attorneys even where the constitution provides that "every person of good moral character, being a voter, shall be entitled to admission to practice law in all the courts of justice." In Pennsylvania it has been held by a lower court that women may register as law students, that a rule of court providing that no person shall be registered as a student of law until "he" has been examined and has produced a certificate of "his" good moral character, etc., does not exclude women, and that women may, under the act of 1834, be admitted to practice. In New Hampshire the doctrine of the Colorado and Indiana courts is followed, and women are held to be eligible.

In nearly all of the States at the present time, either by the rule of the courts or by the express sanction of statutes, women are admitted to practice as attorneys in the courts of the State.

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MARRIED WOMEN AS WITNESSES

IT is a rule of the common law that neither a husband nor a wife is a competent witness in any action or proceeding, either civil or criminal, to which the other is a party. A reason for this prohibition was found by some of the earlier authorities in the legal unity of husband and wife. Now, generally, this rule is based upon the ground of common interest, which was a disqualification for a witness at common law. By far the strongest reason, however, is public policy, as it is regarded as being of first importance to society to preserve the privacy and harmony of marital relations. Mr. Greenleaf says, in his work on evidence: "This exclusion is founded partly in the identity of their legal rights and interests, and partly in principles of public policy, which lie at the basis of civil society. For it is essential to the happiness of social life that the confidence subsisting between husband and wife should be sacredly cherished in its most unlimited extent."

This rule was carried to the extent that an absolute divorce did not render either

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spouse competent to testify as to any matter which transpired during the continuance of the marriage relation, if such a matter would have been excluded had the marriage relation continued, although after such a divorce either spouse might testify to any matter which did not violate the confidence of their former relation. Nor did the death of one of the spouses remove the seal of secrecy from the lips of the other in regard to confidential communications which had taken place between them. It was an early rule of the English law that neither a husband nor a wife ought to be permitted to give any evidence in any form of proceeding which would even tend to charge the other with the commission of a crime. Later this rule was modified so that in collateral proceedings which did not involve the mutual interests of husband and wife either of them might testify to matters which merely tended to incriminate the other, since neither the record of such a collateral proceeding nor the testimony given therein could afterward be used as evidence in a direct prosecution against the spouse of the witness. This latter form of the rule has been generally adopted in the United States, though it would seem that testimony should not be compelled if the witness declines to give it voluntarily. Where a supposed marriage is void, the alleged hus-

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band and wife are competent witnesses for or against each other, even though they in good faith believed themselves to have been lawfully married. It has been held that the first and lawful wife of a bigamist is not a competent witness against her husband, and it has been ruled that after prima-facie proof of a valid marriage the first wife is not competent to prove such marriage invalid. But after proof of the first marriage the second wife is a competent witness to prove the defendant's marriage to her, because such a marriage is void, and she is not his lawful wife. If, however, the second marriage is not disputed, and the question is as to the validity of the first marriage, the alleged second wife cannot be permitted as a witness, because she is prima facie the lawful wife of the defendant.

There is an exception to the rule that excludes the testimony of spouses against each other to be found in cases of personal outrage committed by one upon the other. In all kinds of offenses that involve a personal injury to the wife or affecting her liberty, she has always been allowed to testify directly against her husband as a matter of necessity. And so where the husband is the injured party, he is allowed to testify against his wife, and they are also allowed to testify in favor of each other. It is only that the

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ends of justice may be attained that this relaxation of the general rule is made, and it extends no further than necessity requires; therefore the exception is confined to cases of personal violence endangering the bodily safety or liberty of the witness.

It is now very generally provided throughout the United States, by statute, that where the husband or the wife acts as agent for the other in the course of any business transaction, the one that so acts may be a witness for the other with reference to all things that have been done or said within the scope of such an agency. Wherever a wife acts in the presence of her husband she cannot be said generally to act as his agent, and her testimony is not, therefore, admissible. The proof of the agency must in such cases be given as a condition precedent to the admission of the testimony of husband or wife, as the case may be, and then such testimony must be confined to matters which properly belong to such agency. Where a wife has kept her husband's business books of original entry she is a competent witness for him when he sues on a book account. But it is necessary that she has kept the original entries, for if she has only made up books from original memoranda made by him from day to day, she is not thereby rendered a competent witness.

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There is another and very useful exception to the rule excluding husband or wife from the witness stand. It is found in cases of actions for damages against railroad companies and other common carriers for the loss of luggage. As a wife very commonly packs her husband's trunks and almost always packs her own, and often she alone fully knows the contents of such trunks, her testimony is admitted as a matter of necessity.

In the United States very considerable alterations of the rules of evidence have been made, ranging all the way from slight modifications of the common-law rule to statutes making husband and wife competent witnesses for and against each other in all judicial proceedings, subject to the restriction that they are not permitted to testify to matters which come to their knowledge in the confidence of the marriage relation, if objection be made.

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THE EMPLOYMENT OF WOMEN

A NOTICEABLE feature of the social development of the latter half of the nineteenth century was the giving to women a larger freedom in the choice of occupation and industrial vocation. To a considerable extent, this movement has been reflected in the laws of the several States. The development of this feature of the civil status of woman is seen, however, to be by no means uniform, but to depend upon local conditions. The law relating to the industrial employment of women is developing along two distinct lines, which may be described as lines of emancipation and limitation.

The tendency to relieve woman from the restraint which she has labored under in times past in her choice of industrial vocations and to place her upon an even footing with man in this respect has been general, but has not everywhere found expression in the law. Where such legal expressions have been given, the positions taken are not the same. The radical position in this matter has been taken by those States which have placed in their constitutional or statute law

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the bold declaration that sex shall constitute no disqualification for employment. The States of Illinois, California, and Washington have made such declarations, although Illinois and Washington have added restrictions. The constitution of the State of California is without proviso in this matter, and declares simply that no person shall on account of sex be disqualified from entering or pursuing any lawful business, vocation, or profession.

The law of both Illinois and Washington contains provisions that are in restraint and also in relief of women. In Illinois it is declared that no person shall be precluded or debarred from any occupation, profession, or employment (except military) on account of sex, provided that this act shall not be construed to affect the eligibility of any person to an elective office. The same law is also in relief of woman, declaring that it shall not be construed as requiring any female to work on streets or roads or to serve on juries.

The State of Washington has declared that every avenue of employment shall be open to women, and that any business, vocation, profession, and calling followed and pursued by men may be followed and pursued by women. This law also contains a provision similar to that obtaining in the State of Illi-

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nois, that it shall not be construed so as to prevent women from holding public office.

Legislation in restriction of the employment of women is always addressed to the employers of labor, and in certain cases specifies industries in which women may not be employed, but more often limits the number of hours that shall constitute a legal work-day.

The prohibited industry is that of mining. The States of Alabama, Colorado, Illinois, Indiana, Pennsylvania, Utah, West Virginia, and Wyoming have so legislated. The States of Alabama and Illinois have forbidden the work of women in any kind of mines, while the States of Colorado, Pennsylvania, and West Virginia forbid the employment of women in coal-mines. The State of Utah, by its constitution, forbids the employment of women in underground mines, and the State of Wyoming forbids their employment in coal, iron, or other dangerous mines.

The limit set by law upon the number of hours of labor for women is either a simple declaration that so many hours shall constitute a legal work-day or a prohibition laid upon the employers of women to allow them to work more than a certain number of hours in a day or week, under the penalty of the employer being found guilty of a misdemeanor. The States of New York and Mas-

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sachusetts have developed the most detailed mercantile law regulating the employment of women, and the other States are seen to be following in their lead.

Ten hours of labor is made a legal work-day for women in the States of Connecticut, Louisiana, Maine, Massachusetts, Michigan, New Hampshire, New York, North Dakota, Pennsylvania, Rhode Island, South Dakota, and Virginia, and in the Territory of Oklahoma. The shorter work-day of eight hours has been made legal in the States of Illinois and Wisconsin, while the State of New Jersey has made fifty-five hours of labor in a week, rendered between seven o'clock in the morning and noon, and between one o'clock and six o'clock in the afternoon, the legal limit.

Nearly all of the States that have legislated in this matter have made exceptions to the universal application of the legal work-day to all industries. The common exception is farming, where no legal work-day is attempted. Another excepted industry is the preserving and canning of perishable fruit and other goods where the exigencies of the season would make a uniform work-day impracticable.

By the New York law the work-day for women cannot begin before six o'clock in the morning or continue beyond nine o'clock at night.

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THE PROTECTION OF WOMEN

THE protection of the honor and purity of woman that is afforded by the laws of the several States is not only a feature of her relation to the body politic that is of the highest importance to her, but is also an absolutely essential element in the continuous integration and elevation of society. So while the age at which a female is regarded as being able to consent to immorality, and the punishments that are provided by the State in cases of the violation of women, are in their nature matters of the criminal law which lie outside of the limits set for this work, they are so necessary in drawing a general picture of the legal condition of American women that in considering them an exception is rightly made.

Our laws afford protection to females both by declaring an age under which consent to immorality on the part of the female cannot be presumed in law, and by declaring the violation of a woman to be a misdemeanor or a felony, punishable with greater or lesser penalties. There has been a progression in legislation in both of these matters, and, gen-

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erally speaking, while the age of consent has been raised throughout the country, the penalty has been reduced from death or imprisonment for life to a more or less limited term of imprisonment or a fine.

The age under which a girl or young woman will not be regarded by the law as having the capacity to consent to a violation of her person ranges from seven years to eighteen years. In the State of Delaware the age is fixed at seven years. In the States of Alabama, Florida, Georgia, Mississippi, North Carolina, and South Carolina the age of consent is placed at ten years. Twelve years is the rule in the States of Kentucky, Louisiana, Tennessee, and West Virginia. New Hampshire has placed the limit at thirteen years. Fourteen years is the rule in the States of California, Illinois, Indiana, Maine, Maryland, Nevada, Vermont, Virginia, Wisconsin, North Carolina, and the Territory of New Mexico. The two States of Iowa and Texas have placed the age of consent at fifteen years. Sixteen years is the rule in the States of Arkansas, Connecticut, the District of Columbia, Massachusetts, Michigan, Minnesota, Montana, New Jersey, North Dakota, Ohio, the Territory of Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Washington, and Tennessee. The highest age, that of eighteen years, is the rule in

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the Territory of Arizona and in the States of Colorado, Idaho, Kansas, Missouri, Nebraska, New York, Utah, Wyoming. The crime of rape is a misdemeanor between the ages of seven and eighteen in Delaware, between the ages of ten and fourteen in North Carolina, and between the ages of twelve and sixteen years and one day in Tennessee.

The penalties provided by the statutes of the various States for the crime of rape are so varied that general classification of the States is impossible, and a clear idea of the condition of the law in this respect can be had only by considering the statutes of each State separately. In Alabama the penalty is death or imprisonment for life in the penitentiary, at the discretion of the jury. In Arizona it is confinement in the Territorial prison for life or for a term of years not less than five. Arkansas provides imprisonment in the penitentiary for not less than five years nor for more than twenty-one years. In California the penalty is imprisonment in the penitentiary for not less than five years, in Colorado for not less than one year nor more than twenty years, and in Connecticut imprisonment for not less than three years. In Delaware the penalty is death, but the offense is only a misdemeanor between seven and eighteen years of age, and the offender can only be fined, and for not more than one thousand

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dollars, or imprisonment for a term of years, not more than seven, or both fined and imprisoned, in the discretion of the court. The law in the District of Columbia provides for the first offense imprisonment at hard labor in the penitentiary for not more than fifteen years, and for each subsequent offense not more than thirty years. In Florida the penalty is death or imprisonment for life. In Georgia, also, the penalty is death, unless the defendant is recommended to mercy by the jury, in which case the punishment is hard labor in the penitentiary for not less than one year nor longer than twenty years. Idaho provides imprisonment for five years, and this may be extended to life; and Illinois for one year, with the same extension. Indiana provides a term of from one to twenty-one years, and Iowa imprisonment for life or any term of years. Kansas provides imprisonment at hard labor for from five to twenty-one years. Kentucky inflicts the penalty of death or imprisonment for life, at the discretion of the jury. Louisiana inflicts the penalty of death. Maine provides imprisonment for life or for any term of years. In Maryland the offender, at the discretion of the court, suffers death or imprisonment in the penitentiary for a definite period of not less than eighteen months nor more than twenty-one years. Massachusetts provides imprisonment for

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life or any term of years, and Michigan imprisonment for life or for any such period as the court in its discretion shall direct.

In Minnesota, if the child is under ten years the penalty is imprisonment for life; if over ten and under fourteen, a term of not less than ten nor more than thirty years; if over fourteen and under sixteen, State prison for not less than one nor more than seven years, or imprisonment in the county jail for not less than three months nor more than one year. Mississippi provides a penalty of death, unless the jury decide upon imprisonment for life. In Missouri it is imprisonment in the penitentiary for two years, or a fine of from one hundred to five hundred dollars, or imprisonment in the county jail for from one to six months, or both such fine and imprisonment, at the discretion of the court. Montana gives State prison for not less than five years, Nebraska for not less than three nor more than twenty years, and Nevada for not less than five years, which may extend to life. New Hampshire provides a term of imprisonment not exceeding thirty years. New Jersey inflicts a fine not exceeding one thousand dollars, or imprisonment at hard labor for any term of years not exceeding fifteen, or both, and New Mexico a term of not less than five nor more than twenty years. In New York, for the first degree, the penalty is a term

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of not more than twenty years, and for the second degree not more than ten years. North Carolina, if the victim be under ten years, the penalty of death; if over ten and under fourteen, fine or imprisonment in the State prison, at the discretion of the court, if the female was previously chaste. North Dakota provides for the first degree a term of not less than ten years and for the second degree not less than five years, and Ohio provides for a term of from three to twenty years. In Oklahoma, for the first degree, when the girl is under fourteen years, a term of not less than ten years; for the second degree, not less than five years, provided that the female is of previous chaste and virtuous character. Oregon provides imprisonment for not less than three nor more than twenty years, and prior unchastity of the woman is no defense.

Pennsylvania inflicts a fine of not over one thousand dollars and imprisonment by separate and solitary confinement at hard labor, or simple imprisonment not exceeding fifteen years, and Rhode Island imprisonment for life or for any term not less than ten years. South Carolina inflicts the death penalty, with privilege of the jury to recommend to mercy, when the penalty may be reduced to imprisonment at hard labor for life. South Dakota gives, for the first degree, a term of not less than ten years,

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and for the second degree not less than five years. In Tennessee, if the girl is under twelve years the penalty is death by hanging or, in the discretion of the jury, a life term or not less than ten years. The penalty in Texas is death or imprisonment for not less than five years, in the discretion of the jury, and in Utah the same imprisonment. Vermont inflicts a term of not more than twenty years and a fine of not more than two hundred dollars, or either penalty, in the discretion of the court. Virginia inflicts, in the discretion of the jury, the death penalty or imprisonment of from five to twenty years, and Washington imprisonment for life or any term of years. West Virginia inflicts the death penalty or, in the discretion of the jury, imprisonment for not less than seven nor more than twenty years. Wisconsin inflicts a term of from five to thirty-five years, and Wyoming a term of imprisonment of not less than one year, which may extend to life.

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TABLE OF STATUTES

THE following table of constitutional and statute laws relating to the property rights of married women will be found of use to those who may desire to undertake more detailed studies of this subject. This table is not exhaustive, but it affords starting-points for the examination of the laws of each State.

ALABAMA.—Code of 1843; February 28, 1887; February 18, 1895.

ARIZONA.—Code, 1864-71; January 22, 1871; February 19, 1881.

ARKANSAS.—Constitution of 1874.

CALIFORNIA.—March 9, 1870; March 21, 1872.

COLORADO.—November 7, 1861.

CONNECTICUT.—1809; April 20, 1877.

DELAWARE.—April 9, 1873; March 17, 1875.

DISTRICT OF COLUMBIA.—Code of 1857; April 10, 1869.

FLORIDA.—February 11, 1881; Code of 1891.

GEORGIA.—Code of 1882.

IDAHO.—Code of 1887.

ILLINOIS.—March 3, 1845; February 21 and April 24, 1861; March 24, 1869.

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INDIANA.—March 3, 1859; May 31, 1879; April 16 and September 19, 1881.
IOWA.—April 14, 1870; Code of 1873.
KANSAS.—October 31, 1868.
KENTUCKY.—April 11, 1873; March 15, 1894.
LOUISIANA.—Code of 1889.
MAINE.—March 22, 1844; Code of 1857.
MARYLAND.—June 12, 1860; May 13, 1882.
MASSACHUSETTS.—May 5, 1855.
MICHIGAN.—Constitution of 1850; February 13, 1855.
MINNESOTA.—March 5 and June 1, 1869.
MISSISSIPPI.—Code of 1880.
MISSOURI.—March 25, 1875; April 17, 1877; June 11, 1889.
MONTANA.—January 12, 1872; February 4, 1874; March 7, 1887.
NEBRASKA.—March 1, 1871; March 3, 1881.
NEVADA.—February 27 and March 10, 1873.
NEW HAMPSHIRE.—July 4 and August 1, 1860; July 18, 1876.
NEW JERSEY.—March 25, 1852; April 2, 1873; March 27, 1874.
NEW MEXICO.—January 12, 1852; April 2, 1884.
NEW YORK.—March 20, 1860; April 25, 1867; Laws of 1896, chapter 272.
NORTH CAROLINA.—January 29, 1849; February 12, 1872.
NORTH DAKOTA.—January 12, 1866; January 13, 1871.

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OHIO.—Code of 1835; Code of 1880; March 19, 1887.
OKLAHOMA.—Code of 1893.
OREGON.—December 15, 1854; October 21, 1878.
PENNSYLVANIA.—April 11, 1848; April 3, 1872.
RHODE ISLAND.—January, 1856; May 26 and June 1, 1833.
SOUTH CAROLINA.—January 12, 1866; January 13, 1871.
TENNESSEE.—March 2, 1870; Code of 1840.
UTAH.—February 16, 1872; February 18, 1876; August 1, 1884.
VERMONT.—November 15, 1847; November 26, 1884; November 19, 1888.
VIRGINIA.—Code of 1849; April 4, 1877.
WASHINGTON.—November 14, 1879.
WEST VIRGINIA.—March 2, 1868; February 16, 1883.
WISCONSIN.—February 1, 1850; March 14, 1859; March 25, 1872.
WYOMING.—December 4, 1869.

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